State of Montana
Department of Labor and Industry
Business Standards Division

DEPARTMENT AND BOARD STATUTES RELATING TO THE PRACTICE OF PHARMACY

ISSUED BY:

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TITLE 2
GOVERNMENT STRUCTURE & ADMINISTRATION

CHAPTER 15
EXECUTIVE BRANCH OFFICERS AND AGENCIES

Part 17 -- Department of Labor & Industry

2-15-1733. Board of pharmacy. (1) There is a board of pharmacy.

(2) The board consists of six members appointed by the governor with the consent of the senate. Three members must be licensed pharmacists, one member must be a registered pharmacy technician, and two members must be from the general public.

(a) Each licensed pharmacist member must have graduated and received the first professional undergraduate degree from the school of pharmacy of the university of Montana-Missoula or from an accredited pharmacy degree program that has been approved by the board. Each licensed pharmacist member must have at least 5 consecutive years of practical experience as a pharmacist immediately before appointment to the board. A licensed pharmacist member who, during the member's term of office, ceases to be actively engaged in the practice of pharmacy in this state must be automatically disqualified from membership on the board.

(b) A registered pharmacy technician member must have at least 5 consecutive years of practical experience as a pharmacy technician immediately before appointment to the board. A registered pharmacy technician member who, during the member's term of office, ceases to be actively engaged as a pharmacy technician in this state must be automatically disqualified from membership on the board.

(c) Each public member of the board must be a resident of the state and may not be or ever have been:

(i) a member of the profession of pharmacy or the spouse of a member of the profession of pharmacy;

(ii) a person having any material financial interest in the providing of pharmacy services; or

(iii) a person who has engaged in any activity directly related to the practice of pharmacy.

(3) Members shall serve staggered 5-year terms. A member may not serve more than two consecutive full terms. For the purposes of this section, an appointment to fill an unexpired term does not constitute a full term.

(4) A member must be removed from office by the governor:

(a) upon proof of malfeasance or misfeasance in office, after reasonable notice of charges against the member and after a hearing; or

(b) upon refusal or inability to perform the duties of a board member in an efficient, responsible, and professional manner.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

History: (1) thru (3)En. Sec. 643, Pol. C. 1895; re-en. Sec. 1625, Rev. C. 1907; re-en. Sec. 4, Ch. 134, L. 1915; re-en. Sec. 3173, R.C.M. 1921; re-en. Sec. 3173, R.C.M. 1935; amd. Sec. 3, Ch. 175, L. 1939; Sec. 66-1503, R.C.M. 1947; amd. and redes. 82A-1602.21 by Sec. 149, Ch. 350, L. 1974; Sec. 82A-1602.21, R.C.M. 1947; (4)En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973; amd. Sec. 1, Ch. 57, L. 1974; amd. Sec. 1, Ch. 58, L. 1974; amd. Sec. 1, Ch. 84, L. 1974; amd. Sec. 1, Ch. 99, L. 1974; amd. Sec. 354, Ch. 350, L. 1974; Sec. 82A-1602, R.C.M. 1947; R.C.M. 1947, 82A-1602(part), 82A-1602.21; amd. Sec. 3, Ch. 244, L. 1981; amd. Sec. 5, Ch. 247, L. 1981; MCA 1979, 2-15-1609; redes. 2-15-1843 by Sec. 4, Ch. 274, L. 1981; amd. Sec. 3, Ch. 362, L. 1981; amd. Sec. 1, Ch. 379, L. 1981; amd. Sec. 2, Ch. 247, L. 1983; amd. Sec. 36, Ch. 308, L. 1995; amd. Sec. 1, Ch. 388, L. 2001; Sec. 2-15-1843, MCA 1999; redes. 2-15-1733 by Sec. 221(2), Ch. 483, L. 2001; amd. Sec. 1, Ch. 224, L. 2003.

Cross-References

Application of Montana Administrative Procedure Act to licensing, 2-4-631.

Disasters and emergencies -- emergency reciprocity for persons licensed out of state, 10-3-204.

General duties of boards, 37-1-131.

Licensure of former criminal offenders, Title 37, ch. 1, part 2.

General provisions relating to health care practitioners, Title 37, ch. 2.

Pharmacy, Title 37, ch. 7.

Nondiscrimination in licensing, 49-3-204.

TITLE 37
PROFESSIONS AND OCCUPATIONS

CHAPTER 1
GENERAL PROVISIONS

Part 1 -- Duties and Authority of Department, Director, and Boards

37-1-101. Duties of department.
37-1-102. Renumbered 37-1-121.
37-1-103. Renumbered 37-1-131.
37-1-104. Standardized forms.
37-1-105. Reporting disciplinary actions against licensees.
37-1-106. Biennial report.
37-1-107 through 37-1-120 reserved.
37-1-121. Duties of commissioner.
37-1-122 through 37-1-129 reserved.
37-1-130. Definitions.
37-1-131. Duties of boards -- quorum required.
37-1-132. Nominees for appointment to licensing and regulatory boards.
37-1-133. Board members' compensation and expenses.
37-1-134. Fees commensurate with costs.
37-1-135. Licensing investigation and review -- record access.
37-1-136. Disciplinary authority of boards -- injunctions.
37-1-137. Grounds for disciplinary action as grounds for license denial -- conditions to new licenses.
37-1-138. Protection of professional licenses for activated military reservists -- rulemaking authority -- definitions.
37-1-139 and 37-1-140 reserved.
37-1-141. License renewal -- lapse -- expiration -- termination.

Part 2 -- Licensure of Criminal Offenders

37-1-201. Purpose.
37-1-202. Intent and policy.
37-1-203. Conviction not a sole basis for denial.
37-1-204. Statement of reasons for denial.
37-1-205. Licensure on completion of supervision.

Part 3 -- Uniform Professional Licensing and Regulation Procedures

37-1-301. Purpose.
37-1-302. Definitions.
37-1-303. Scope.
37-1-304. Licensure of out-of-state applicants -- reciprocity.
37-1-305. Temporary practice permits.
37-1-306. Continuing education.
37-1-307. Board authority.
37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exceptions.
37-1-309. Notice -- request for hearing.
37-1-310. Hearing -- adjudicative procedures.
37-1-311. Findings of fact -- order -- report.
37-1-312. Sanctions -- stay -- costs -- stipulations.
37-1-313. Appeal.
37-1-314. Reinstatement.
37-1-315. Enforcement of fine.
37-1-316. Unprofessional conduct.
37-1-317. Practice without license -- investigation of complaint -- injunction -- penalties.
37-1-318. Violation of injunction -- penalty.

37-1-319. Rules.
37-1-320. Mental intent -- unprofessional conduct.
37-1-321 through 37-1-330 reserved.
37-1-331. Correctional health care review team.

Part 1
Duties and Authority of Department, Director, and Boards

Part Cross-References

Contested cases, Title 2, ch. 4, part 6.
Appointment and qualifications of department heads -- duties, 2-15-111, 2-15-112.
Allocation for administrative purposes only, 2-15-121.
Department and boards created, Title 2, ch. 15, part 18.
Department's duties for Board of Horseracing, 23-4-103.
Grounds for disciplinary action as grounds for license denial -- conditions to new licenses, 37-1-137.

37-1-101. Duties of department. In addition to the provisions of 2-15-121, the department of labor and industry shall:

(1) establish and provide all the administrative, legal, and clerical services needed by the boards within the department, including corresponding, receiving and processing routine applications for licenses as defined by a board, issuing and renewing routine licenses as defined by a board, disciplining licensees, setting administrative fees, preparing agendas and meeting notices, conducting mailings, taking minutes of board meetings and hearings, and filing;

(2) standardize policies and procedures and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for all meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) contract for or administer and grade examinations required by each board;

(5) investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board within the department;

(6) assess the costs of the department to the boards and programs on an equitable basis as determined by the department;

(7) adopt rules setting administrative fees and expiration, renewal, and termination dates for licenses;

(8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed individual's board after a finding of reasonable cause by a screening panel of the board pursuant to 37-1-307(1)(e);

(9) provide notice to the appropriate legislative interim committee when a board cannot operate in a cost-effective manner;

(10) monitor a board's cash balances to ensure that the balances do not exceed two times the board's annual appropriation level and adjust fees through administrative rules when necessary; and

(11) establish policies and procedures to set fees for administrative services, as provided in 37-1-134, commensurate with the cost of the services provided. Late penalty fees may be set without being commensurate with the cost of services provided.

History: En. 82A-1603 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1603; amd. Sec. 1, Ch. 293, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 390, L. 1983; amd. Sec. 1, Ch. 307, L. 1985; amd. Sec. 42, Ch. 83, L. 1989; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 21, Ch. 429, L. 1995; amd. Sec. 106, Ch. 483, L. 2001; amd. Sec. 6, Ch. 467, L. 2005.

37-1-102. Renumbered 37-1-121. Code Commissioner, 1981.

37-1-103. Renumbered 37-1-131. Code Commissioner, 1981.

37-1-104. Standardized forms. The department shall adopt standardized forms and processes to be used by the boards and department programs. The standardization is to streamline processes, expedite services, reduce costs and waste, and facilitate computerization.

History: En. Sec. 2, Ch. 293, L. 1981; amd. Sec. 7, Ch. 467, L. 2005.

37-1-105. Reporting disciplinary actions against licensees. The department has the authority and shall require that all boards and department programs require each applicant for licensure or renewal to report any legal or disciplinary action against the applicant that relates to the

propriety of the applicant's practice of or fitness to practice the profession or occupation for which the applicant seeks licensure. Failure to furnish the required information, except pursuant to 37-1-138, or the filing of false information is grounds for denial or revocation of a license.

History: En. Sec. 3, Ch. 293, L. 1981; amd. Sec. 5, Ch. 271, L. 2003; amd. Sec. 8, Ch. 467, L. 2005.

37-1-106. Biennial report. The department, in cooperation with each licensing board, shall prepare a biennial report. The biennial report of the department shall contain for each board a summary of the board's activities, the board's goals and objectives, a detailed breakdown of board revenues and expenditures, statistics illustrating board activities concerning licensing, summary of complaints received and their disposition, number of licenses revoked or suspended, legislative or court action affecting the board, and any other information the department or board considers relevant. The department shall submit the report to the office of budget and program planning as a part of the information required by 17-7-111.

History: En. Sec. 4, Ch. 293, L. 1981; amd. Sec. 10, Ch. 125, L. 1983; amd. Sec. 32, Ch. 112, L. 1991; amd. Sec. 30, Ch. 349, L. 1993.

37-1-107 through 37-1-120 reserved.

37-1-121. Duties of commissioner. In addition to the powers and duties under 2-15-112 and 2-15-121, the commissioner of labor and industry shall:

(1) at the request of a party, appoint an impartial hearings examiner to conduct hearings whenever any board or department program holds a contested case hearing. The hearings examiner shall conduct hearings in a proper and legal manner.

(2) establish the qualifications of and hire all personnel to perform the administrative, legal, and clerical functions of the department for the boards. Boards within the department do not have authority to establish the qualifications of, hire, or terminate personnel. The department shall consult with the boards regarding recommendations for qualifications for executive or executive director positions.

(3) approve all contracts and expenditures by boards within the department. A board within the department may not enter into a contract or expend funds without the approval of the commissioner.

History: En. 82A-1604 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 14, Ch. 533, L. 1977; R.C.M. 1947, 82A-1604; amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-102, MCA 1979; redes. 37-1-121 by Code Commissioner, 1981; amd. Sec. 1, Ch. 165, L. 1985; amd. Sec. 22, Ch. 429, L. 1995; amd. Sec. 107, Ch. 483, L. 2001; amd. Sec. 9, Ch. 467, L. 2005.

37-1-122 through 37-1-129 reserved.

37-1-130. Definitions. As used in this part, the following definitions apply:

(1) "Administrative fee" means a fee established by the department to cover the cost of administrative services as provided for in 37-1-134.

(2) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(3) "Board fee" means:

(a) a fee established by the board to cover program area costs as provided in 37-1-134; and

(b) any other legislatively prescribed fees specific to boards and department programs.

(4) "Department" means the department of labor and industry established in 2-15-1701.

(5) "Department program" means a program administered by the department pursuant to this title and not affiliated with a board.

(6) "Expired license" means a license that is not reactivated within the period of 45 days to 2 years after the renewal date for the license.

(7) "Lapsed license" means a license that is not renewed by the renewal date and that may be reactivated within the first 45-day period after the renewal date for the license.

(8) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation.

(9) "Terminated license" means a license that is not renewed or reactivated within 2 years of the license lapsing.

History: En. Sec. 5, Ch. 274, L. 1981; amd. Sec. 108, Ch. 483, L. 2001; amd. Sec. 10, Ch. 467, L. 2005.

37-1-131. Duties of boards -- quorum required. A quorum of each board within the department shall:

(1) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction;

(2) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board's jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

(3) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (2), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71;

(4) pay to the department the board's pro rata share of the assessed costs of the department under 37-1-101(6);

(5) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

(6) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

(7) The board or the department program may:

(a) establish the qualifications of applicants to take the licensure examination;

(b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;

(c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; and

(d) require continuing education for licensure as provided in 37-1-306. If the board or department requires continuing education for continued licensure, the board or department may not audit or verify continuing education requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement after the renewal period closes.

(8) A board may, at the board's discretion, request the applicant to make a personal appearance before the board for nonroutine license applications as defined by the board.

History: En. 82A-1605 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 11, Ch. 250, L. 1973; R.C.M. 1947, 82A-1605(1) thru (3); amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-103, MCA 1979; redes. 37-1-131 by Code Commissioner, 1981; amd. Sec. 2, Ch. 165, L. 1985; amd. Sec. 1, Ch. 90, L. 1991; amd. Sec. 10, Ch. 619, L. 1993; amd. Sec. 23, Ch. 429, L. 1995; amd. Sec. 6, Ch. 492, L. 2001; amd. Sec. 8, Ch. 416, L. 2005; amd. Sec. 11, Ch. 467, L. 2005.

37-1-132. Nominees for appointment to licensing and regulatory boards. Private associations and members of the public may submit to the governor lists of nominees for appointment to professional and occupational licensing and regulatory boards. The governor may consider nominees from the lists when making appointments to such boards.

History: En. Sec. 9, Ch. 244, L. 1981.

Cross-References

Appointing power, Art. VI, sec. 8, Mont. Const.

37-1-133. Board members' compensation and expenses. Unless otherwise provided by law, each member of a board allocated to the department is entitled to receive $50 per day compensation and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day spent on official board business. Board members who conduct official board business in their city of residence are entitled to receive a midday meal allowance, as provided for in 2-18-502. Ex officio board members may not receive compensation but shall receive travel expenses.

History: En. Sec. 1, Ch. 474, L. 1981; amd. Sec. 2, Ch. 123, L. 1983; amd. Sec. 4, Ch. 672, L. 1983.

37-1-134. Fees commensurate with costs. Each board allocated to the department shall set board fees related to the respective program area that are commensurate with costs for licensing, including fees for initial licensing, reciprocity, renewals, applications, inspections, and audits. A board may set an examination fee that must be commensurate with costs. A board that issues endorsements and licenses specialties shall set respective fees commensurate with costs. Unless otherwise provided by law, the department may establish standardized fees, including but not limited to fees for administrative services such as license verification, duplicate licenses, late penalty

renewals, licensee lists, and other administrative service fees determined by the department as applicable to all boards and department programs. The department shall collect administrative fees on behalf of each board or department program and deposit the fees in the state special revenue fund in the appropriate account for each board or department program. Administrative service costs not related to a specific board or program area may be equitably distributed to board or program areas as determined by the department. Each board and department program shall maintain records sufficient to support the fees charged for each program area.

History: En. Sec. 1, Ch. 345, L. 1981; amd. Sec. 12, Ch. 467, L. 2005.

37-1-135. Licensing investigation and review -- record access. Any person, firm, corporation, or association that performs background reviews, complaint investigations, or peer reviews pursuant to an agreement or contract with a state professional or occupational licensing board shall make available to the board and the legislative auditor, upon request, any and all records or other information gathered or compiled during the course of the background review, complaint investigation, or peer review.

History: En. Sec. 1, Ch. 242, L. 1981.

Cross-References

Procurement of services, Title 18, ch. 8.

37-1-136. Disciplinary authority of boards -- injunctions. (1) Subject to 37-1-138, each licensing board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

(a) revocation of a license;

(b) suspension of its judgment of revocation on terms and conditions determined by the board;

(c) suspension of the right to practice for a period not exceeding 1 year;

(d) placing a licensee on probation;

(e) reprimand or censure of a licensee; or

(f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by a board shall be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from engaging in the practice of the occupation or profession regulated by the board until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

(4) An action may not be taken against a person who is in compliance with Title 50, chapter 46.

History: En. Sec. 1, Ch. 246, L. 1981; amd. Sec. 6, Ch. 271, L. 2003; amd. Sec. 10, I.M. No. 148, approved Nov. 2, 2004.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

37-1-137. Grounds for disciplinary action as grounds for license denial -- conditions to new licenses. (1) Unless otherwise provided by law, grounds for disciplinary action by a board allocated to the department of labor and industry against a holder of an occupational or professional license may be, under appropriate circumstances, grounds for either issuance of a probationary license for a period not to exceed 1 year or denial of a license to an applicant.

(2) The denial of a license or the issuance of a probationary license under subsection (1) must be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 1, Ch. 273, L. 1985; amd. Sec. 109, Ch. 483, L. 2001.

37-1-138. Protection of professional licenses for activated military reservists -- rulemaking authority -- definitions. (1) For purposes of this section, the following definitions apply:

(a) "Activated reservist" means a member of a reserve component who has received federal military orders to report for federal active duty for at least 90 consecutive days.

(b) "License" has the meaning provided in 37-1-302.

(c) "Reserve component" means the Montana national guard or the military reserves of the United States armed forces.

(2) An activated reservist who holds an occupational or professional license may report the reservist's activation to the appropriate professional licensing board or to the department of labor and industry if the licensing requirements are administered by the department. The report must, at a minimum, include a copy of the reservist's orders to federal active duty. The report may request that the reservist's professional license revert to an inactive status.

(3) If an activated reservist has requested that the reservist's license revert to inactive status pursuant to subsection (2), then for the duration of the reservist's active duty service under the orders submitted, the department or licensing board may not:

(a) require the collection of professional licensing fees or continuing education fees from the activated reservist;

(b) require that the activated reservist take continuing education classes or file a report of continuing education classes completed; or

(c) revoke or suspend the activated reservist's professional license, require the license to be forfeited, or allow the license to lapse for failure to pay licensing fees or continuing education fees or for failure to take or report continuing education classes.

(4) (a) Upon release from federal active duty service, the reservist shall send a copy of the reservist's discharge documents to the appropriate professional licensing board or to the department.

(b) The board or department shall evaluate the discharge documents, consider the military position held by the reservist and the duties performed by the reservist during the active duty, and compare the position and duties to the licensing requirements for the profession. The board or department shall also consider the reservist's length of time on federal active duty.

(c) Based on the considerations pursuant to subsection (4)(b) and subject to subsection (5):

(i) the license must be fully restored;

(ii) conditions must be attached to the reservist's continued retention of the license; or

(iii) the license must be suspended or revoked.

(5) (a) A licensing board or the department may adopt rules concerning what conditions may be attached to a reservist's professional license pursuant to subsection (4)(c)(ii).

(b) If conditions are attached pursuant to subsection (4)(c)(ii) or the license is suspended or revoked pursuant to subsection (4)(c)(iii), the affected reservist may, within 90 days of the decision to take the action, request a hearing by writing a letter to the board or department. The board or department shall conduct a requested hearing within 30 days of receiving the written request.

History: En. Sec. 2, Ch. 271, L. 2003.

37-1-139 and 37-1-140 reserved.

37-1-141. License renewal -- lapse -- expiration -- termination. (1) The renewal date for a license must be set by department rule. The department shall provide notice prior to the renewal date.

(2) To renew a license, a licensee shall submit a completed renewal form, comply with all certification and continuing education requirements, and remit renewal fees before the end of the renewal period.

(3) A licensee may reactivate a lapsed license within 45 days after the renewal date by following the process in subsection (5) and complying with all certification and educational requirements.

(4) A licensee may reactivate an expired license within 2 years after the renewal date by following the process in subsection (5) and complying with all certification and education requirements that have accrued since the license was last granted or renewed as prescribed by board or department rule.

(5) To reactivate a lapsed license or an expired license, in addition to the respective requirements in subsections (3) and (4), a licensee shall:

(a) submit the completed renewal form;

(b) pay the late penalty fee provided for in subsection (7); and

(c) pay the current renewal fee as prescribed by the department or the board.

(6) (a) A licensee who practices with a lapsed license is not considered to be practicing without a license.

(b) A licensee who practices after a license has expired is considered to be practicing without a license.

(7) The department may assess a late penalty fee for each renewal period in which a license is not renewed. The late penalty fee need not be commensurate with the costs of assessing the fee.

(8) Unless otherwise provided by statute or rule, an occupational or professional license that is not renewed within 2 years of the most recent renewal date automatically terminates. The terminated license may not be reactivated, and a new original license must be obtained.

(9) The department or board responsible for licensing a licensee retains jurisdiction for disciplinary purposes over the licensee for a period of 2 years after the date on which the license lapsed.

(10) This section may not be interpreted to conflict with 37-1-138.

History: En. Sec. 1, Ch. 272, L. 1985; amd. Sec. 13, Ch. 467, L. 2005.

Part 2
Licensure of Criminal Offenders

Part Cross-References

Criminal justice policy -- rights of convicted, Art. II, sec. 28, Mont. Const.
Gambling -- qualifications for licensure, 23-5-176.
Building and loan agent's license revocable for violation of criminal statutes, 32-2-409.
No outfitter's license issued to criminal offender, 37-47-302.
Effect of conviction, 46-18-801.
Supervision of probationers and parolees, Title 46, ch. 23, part 10.

37-1-201. Purpose. It is the public policy of the legislature of the state of Montana to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the assumption of the responsibilities of citizenship. The legislature finds that the public is best protected when such offenders are given the opportunity to secure employment or to engage in a meaningful occupation, while licensure must be conferred with prudence to protect the interests of the public.

History: En. 66-4001 by Sec. 1, Ch. 490, L. 1975; R.C.M. 1947, 66-4001.

37-1-202. Intent and policy. It is the intent of the legislature and the declared policy of the state that occupational licensure be granted or revoked as a police power of the state in its protection of the public health, safety, and welfare.

History: En. 66-4002 by Sec. 2, Ch. 490, L. 1975; R.C.M. 1947, 66-4002.

37-1-203. Conviction not a sole basis for denial. Criminal convictions shall not operate as an automatic bar to being licensed to enter any occupation in the state of Montana. No licensing authority shall refuse to license a person solely on the basis of a previous criminal conviction; provided, however, where a license applicant has been convicted of a criminal offense and such criminal offense relates to the public health, welfare, and safety as it applies to the occupation for which the license is sought, the licensing agency may, after investigation, find that the applicant so convicted has not been sufficiently rehabilitated as to warrant the public trust and deny the issuance of a license.

History: En. 66-4003 by Sec. 3, Ch. 490, L. 1975; R.C.M. 1947, 66-4003.

37-1-204. Statement of reasons for denial. When a licensing agency prohibits an applicant from being licensed wholly or partially on the basis of a criminal conviction, the agency shall state explicitly in writing the reasons for the decision.

History: En. 66-4004 by Sec. 4, Ch. 490, L. 1975; R.C.M. 1947, 66-4004.

Cross-References

Findings of fact required, 2-4-623.
Application of contested case procedure to licensing, 2-4-631.

37-1-205. Licensure on completion of supervision. Completion of probation or parole supervision without any subsequent criminal conviction shall be evidence of rehabilitation; provided, however, that the facts surrounding the situation that led to the probation or parole supervision may be considered as they relate to the occupation for which a license is sought and provided that nothing

herein shall be construed to prohibit licensure of a person while he is under state supervision if the licensing agency finds insufficient evidence to preclude such licensure.

History: En. 66-4005 by Sec. 5, Ch. 490, L. 1975; R.C.M. 1947, 66-4005.

Part 3
Uniform Professional Licensing and Regulation Procedures

37-1-301. Purpose. The purpose of this part is to establish uniform guidelines for the licensing and regulation of professions and occupations under the jurisdiction of professional and occupational licensing boards governed by this part.

History: En. Sec. 1, Ch. 429, L. 1995.

37-1-302. Definitions. As used in this part, the following definitions apply:

(1) "Board" means a licensing board created under Title 2, chapter 15, that regulates a profession or occupation and that is administratively attached to the department as provided in 2-15-121.

(2) "Complaint" means a written allegation filed with a board that, if true, warrants an injunction, disciplinary action against a licensee, or denial of an application submitted by a license applicant.

(3) "Department" means the department of labor and industry.

(4) "Inspection" means the periodic examination of premises, equipment, or procedures or of a practitioner by the department to determine whether the practitioner's profession or occupation is being conducted in a manner consistent with the public health, safety, and welfare.

(5) "Investigation" means the inquiry, analysis, audit, or other pursuit of information by the department, with respect to a written complaint or other information before a board, that is carried out for the purpose of determining:

(a) whether a person has violated a provision of law justifying discipline against the person;

(b) the status of compliance with a stipulation or order of the board;

(c) whether a license should be granted, denied, or conditionally issued; or

(d) whether a board should seek an injunction.

(6) "License" means permission granted under a chapter of this title to engage in or practice at a specific level in a profession or occupation.

(7) "Profession" or "occupation" means a profession or occupation regulated by a board.

History: En. Sec. 2, Ch. 429, L. 1995; amd. Sec. 110, Ch. 483, L. 2001; amd. Sec. 14, Ch. 467, L. 2005.

37-1-303. Scope. This part governs the licensure, the practice and unauthorized practice, and the discipline of professions and occupations governed by this title unless otherwise provided by statutes relating to a specific board and the profession or occupation it regulates. The provisions of this chapter must be construed to supplement the statutes relating to a specific board and the profession it regulates. The method for initiating and judging a disciplinary proceeding, specified in 37-1-307(1)(e), must be used by a board in all disciplinary proceedings involving licensed professionals.

History: En. Sec. 3, Ch. 429, L. 1995.

37-1-304. Licensure of out-of-state applicants -- reciprocity. (1) A board may issue a license to practice without examination to a person licensed in another state if the board determines that:

(a) the other state's license standards at the time of application to this state are substantially equivalent to or greater than the standards in this state; and

(b) there is no reason to deny the license under the laws of this state governing the profession or occupation.

(2) The license may not be issued until the board receives verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment.

(3) This section does not prevent a board from entering into a reciprocity agreement with the licensing authority of another state or jurisdiction. The agreement may not permit out-of-state licensees to obtain a license by reciprocity within this state if the license applicant has not met standards that are substantially equivalent to or greater than the standards required in this state as determined by the board on a case-by-case basis.

History: En. Sec. 4, Ch. 429, L. 1995; amd. Sec. 1, Ch. 210, L. 1997.

37-1-305. Temporary practice permits. (1) A board may issue a temporary practice permit to a person licensed in another state that has licensing standards substantially equivalent to those of this state if the board determines that there is no reason to deny the license under the laws of this state governing the profession or occupation. The person may practice under the permit until a license is granted or until a notice of proposal to deny a license is issued. The permit may not be issued until the board receives verification from the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment.

(2) A board may issue a temporary practice permit to a person seeking licensure in this state who has met all licensure requirements other than passage of the licensing examination. Except as provided in 37-68-311 and 37-69-306, a permit is valid until the person either fails the first license examination for which the person is eligible following issuance of the permit or passes the examination and is granted a license.

History: En. Sec. 5, Ch. 429, L. 1995; amd. Sec. 1, Ch. 203, L. 1999.

37-1-306. Continuing education. A board or, for programs without a board, the department may require licensees to participate in flexible, cost-efficient, effective, and geographically accessible continuing education.

History: En. Sec. 6, Ch. 429, L. 1995; amd. Sec. 15, Ch. 467, L. 2005.

37-1-307. Board authority. (1) A board may:

(a) hold hearings as provided in this part;

(b) issue subpoenas requiring the attendance of witnesses or the production of documents and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint and must be signed by a member of the board. Subpoenas may be enforced as provided in 2-4-104.

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;

(d) establish a screening panel to determine whether there is reasonable cause to believe that a licensee has violated a particular statute, rule, or standard justifying disciplinary proceedings. A screening panel shall specify in writing the particular statute, rule, or standard that the panel believes may have been violated. The screening panel shall also state in writing the reasonable grounds that support the panel's finding that a violation may have occurred. The assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on the screening panel for the case.

(e) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

(2) Each board is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information regarding the board's licensees and license applicants and regarding possible unlicensed practice.

[(3) Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board shall keep the social security number from this source confidential, except that a board may provide the number to the department of public health and human services for use in administering Title IV-D of the Social Security Act.] (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)

History: En. Sec. 7, Ch. 429, L. 1995; amd. Sec. 22, Ch. 552, L. 1997; amd. Sec. 2, Ch. 230, L. 1999; amd. Sec. 8, Ch. 492, L. 2001; amd. Sec. 16, Ch. 467, L. 2005.

37-1-308. Unprofessional conduct -- complaint -- investigation -- immunity -- exceptions. (1) Except as provided in subsections (4) and (5), a person, government, or private entity may submit a written complaint to the department charging a licensee or license applicant with a violation of this part and specifying the grounds for the complaint.

(2) If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have committed a violation of this part, the department may, with the concurrence of a member of the screening panel established in 37-1-307, investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation.

(3) A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

(4) A person under legal custody of a county detention center or incarcerated under legal custody of the department of corrections may not file a complaint under subsection (1) against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while detained or confined in a county detention center or incarcerated under legal custody of the department of corrections unless the complaint is first reviewed by a correctional health care review team provided for in 37-1-331.

(5) A board member may file a complaint with the board on which the member serves or otherwise act in concert with a complainant in developing, authoring, or initiating a complaint to be filed with the board if the board member determines that there are reasonable grounds to believe that a particular statute, rule, or standard has been violated.

History: En. Sec. 8, Ch. 429, L. 1995; amd. Sec. 4, Ch. 475, L. 1997; amd. Sec. 1, Ch. 375, L. 1999; amd. Sec. 9, Ch. 492, L. 2001.

37-1-309. Notice -- request for hearing. (1) If a reasonable cause determination is made pursuant to 37-1-307 that a violation of this part has occurred, a notice must be prepared by department legal staff and served on the alleged violator. The notice may be served by certified mail to the current address on file with the board or by other means authorized by the Montana Rules of Civil Procedure. The notice may not allege a violation of a particular statute, rule, or standard unless the board or the board's screening panel, if one has been established, has made a written determination that there are reasonable grounds to believe that the particular statute, rule, or standard has been violated.

(2) A licensee or license applicant shall give the board the licensee's or applicant's current address and any change of address within 30 days of the change.

(3) The notice must state that the licensee or license applicant may request a hearing to contest the charge or charges. A request for a hearing must be in writing and received in the offices of the department within 20 days after the licensee's receipt of the notice. Failure to request a hearing constitutes a default on the charge or charges, and the board may enter a decision on the basis of the facts available to it.

History: En. Sec. 9, Ch. 429, L. 1995; amd. Sec. 10, Ch. 492, L. 2001.

37-1-310. Hearing -- adjudicative procedures. The procedures in Title 2, chapter 4, governing adjudicative proceedings before agencies; the Montana Rules of Civil Procedure; and the Montana Rules of Evidence govern a hearing under this part. A board has all the powers and duties granted by Title 2, chapter 4.

History: En. Sec. 10, Ch. 429, L. 1995.

37-1-311. Findings of fact -- order -- report. (1) If the board decides by a preponderance of the evidence, following a hearing or on default, that a violation of this part occurred, the department shall prepare and serve the board's findings of fact and an order as provided in Title 2, chapter 4. If the licensee or license applicant is found not to have violated this part, the department shall prepare and serve the board's findings of fact and an order of dismissal of the charges.

(2) The department may report the issuance of a notice and final order to:

(a) the person or entity who brought to the department's attention information that resulted in the initiation of the proceeding;

(b) appropriate public and private organizations that serve the profession or occupation; and

(c) the public.

History: En. Sec. 11, Ch. 429, L. 1995.

37-1-312. Sanctions -- stay -- costs -- stipulations. (1) Upon a decision that a licensee or license applicant has violated this part or is unable to practice with reasonable skill and safety due to a physical or mental condition or upon stipulation of the parties as provided in subsection (3), the board may issue an order providing for one or any combination of the following sanctions:

(a) revocation of the license;

(b) suspension of the license for a fixed or indefinite term;

(c) restriction or limitation of the practice;

(d) satisfactory completion of a specific program of remedial education or treatment;

(e) monitoring of the practice by a supervisor approved by the disciplining authority;

(f) censure or reprimand, either public or private;

(g) compliance with conditions of probation for a designated period of time;

(h) payment of a fine not to exceed $1,000 for each violation. Fines must be deposited in the state general fund.

(i) denial of a license application;

(j) refund of costs and fees billed to and collected from a consumer.

(2) A sanction may be totally or partly stayed by the board. To determine which sanctions are appropriate, the board shall first consider the sanctions that are necessary to protect or compensate the public. Only after the determination has been made may the board consider and include in the order any requirements designed to rehabilitate the licensee or license applicant.

(3) The licensee or license applicant may enter into a stipulated agreement resolving potential or pending charges that includes one or more of the sanctions in this section. The stipulation is an informal disposition for the purposes of 2-4-603.

(4) A licensee shall surrender a suspended or revoked license to the board within 24 hours after receiving notification of the suspension or revocation by mailing it or delivering it personally to the board.

History: En. Sec. 12, Ch. 429, L. 1995.

37-1-313. Appeal. A person who is disciplined or denied a license may appeal the decision to the district court as provided in Title 2, chapter 4.

History: En. Sec. 13, Ch. 429, L. 1995.

37-1-314. Reinstatement. A licensee whose license has been suspended or revoked under this part may petition the board for reinstatement after an interval set by the board in the order. The board may hold a hearing on the petition and may deny the petition or order reinstatement and impose terms and conditions as provided in 37-1-312. The board may require the successful completion of an examination as a condition of reinstatement and may treat a licensee whose license has been revoked or suspended as a new applicant for purposes of establishing the requisite qualifications of licensure.

History: En. Sec. 14, Ch. 429, L. 1995.

37-1-315. Enforcement of fine. (1) If payment of a fine is included in an order and timely payment is not made as directed in the order, the board may enforce the order for payment in the district court of the first judicial district.

(2) In a proceeding for enforcement of an order of payment of a fine, the order is conclusive proof of the validity of the order of payment and the terms of payment.

History: En. Sec. 15, Ch. 429, L. 1995.

37-1-316. Unprofessional conduct. The following is unprofessional conduct for a licensee or license applicant governed by this chapter:

(1) conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;

(2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

(3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

(4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

(5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied.

(8) failure to comply with a term, condition, or limitation of a license by final order of a board;

(9) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;

(10) addiction to or dependency on a habit-forming drug or controlled substance as defined in Title 50, chapter 32, as a result of illegal use of the drug or controlled substance;

(11) use of a habit-forming drug or controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally;

(12) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(13) engaging in conduct in the course of one's practice while suffering from a contagious or infectious disease involving serious risk to public health or without taking adequate precautions, including but not limited to informed consent, protective gear, or cessation of practice;

(14) misappropriating property or funds from a client or workplace or failing to comply with a board rule regarding the accounting and distribution of a client's property or funds;

(15) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(16) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license;

(17) failing to report the institution of or final action on a malpractice action, including a final decision on appeal, against the licensee or of an action against the licensee by a:

(a) peer review committee;

(b) professional association; or

(c) local, state, federal, territorial, provincial, or Indian tribal government;

(18) conduct that does not meet the generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring during the scope and course of the practice is conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards.

History: En. Sec. 16, Ch. 429, L. 1995.

37-1-317. Practice without license -- investigation of complaint -- injunction -- penalties. (1) The department shall investigate complaints or other information received concerning practice by an unlicensed person of a profession or occupation for which a license is required by this title.

(2) (a) Unless otherwise provided by statute, a board may file an action to enjoin a person from practicing, without a license, a profession or occupation for which a license is required by this title. In addition to the penalty provided for in 37-1-318, a person violating an injunction issued pursuant to this section may be held in contempt of court.

(b) A person subject to an injunction for practicing without a license may also be subject to criminal prosecution. In a complaint for an injunction or in an affidavit, information, or indictment alleging that a person has engaged in unlicensed practice, it is sufficient to charge that the person engaged in the unlicensed practice of a licensed profession or occupation on a certain day in a certain county without averring further or more particular facts concerning the violation.

(3) Unless otherwise provided by statute, a person practicing a licensed profession or occupation in this state without complying with the licensing provisions of this title is guilty of a misdemeanor punishable by a fine of not less than $250 or more than $1,000, imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of this chapter constitutes a separate offense.

(4) The department may issue a citation to and collect a fine, as provided in 37-68-316 and 37-69-310, from a person at a job site who is performing plumbing or electrical work and who fails to display a license or proof of licensure at the request of an employee of the department who bears responsibility for compliance with licensure requirements.

History: En. Sec. 17, Ch. 429, L. 1995; amd. Sec. 3, Ch. 230, L. 1999; amd. Sec. 1, Ch. 402, L. 1999.

37-1-318. Violation of injunction -- penalty. A person who violates an injunction issued under 37-1-317 shall pay a civil penalty, as determined by the court, of not more than $5,000. Fifty percent of the penalty must be deposited in the general fund of the county in which the injunction is issued, and 50% must be deposited in the state general fund.

History: En. Sec. 18, Ch. 429, L. 1995.

37-1-319. Rules. A board may adopt rules:

(1) under the guidelines of 37-1-306, regarding continuing education and establishing the number of hours required each year, the methods of obtaining education, education topics, and carrying over hours to subsequent years;

(2) regarding practice limitations for temporary practice permits issued under 37-1-305 and designed to ensure adequate supervision of the practice until all qualifications for licensure are met and a license is granted;

(3) regarding qualifications for inactive license status that may require compliance with stated continuing education requirements and may limit the number of years a person may remain on inactive status without having to reestablish qualifications for licensure;

(4) regarding maintenance and safeguarding of client funds or property possessed by a licensee and requiring the funds or property to be maintained separately from the licensee's funds and property; and

(5) defining acts of unprofessional conduct, in addition to those contained in 37-1-316, that constitute a threat to public health, safety, or welfare and that are inappropriate to the practice of the profession or occupation.

History: En. Sec. 19, Ch. 429, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-1-320. Mental intent -- unprofessional conduct. A licensee may be found to have violated a provision of 37-1-316 or a rule of professional conduct enacted by a governing board without proof that the licensee acted purposefully, knowingly, or negligently.

History: En. Sec. 7, Ch. 492, L. 2001.

37-1-321 through 37-1-330 reserved.

37-1-331. Correctional health care review team. (1) There is a correctional health care review team process in the department. The purpose of a review team is to review complaints filed by an inmate against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while the person was detained or confined in a county detention center or incarcerated under legal custody of the department of corrections. The inmate may file a complaint directly with the correctional health care review team for review or, if a board receives a complaint that has not been reviewed, the board shall forward the complaint to the review team. If the review team has reason to believe that there has been a violation of this part arising out of health care or rehabilitative services provided to a person detained or confined in a county detention center, the review team shall report the possible violation to the department for appropriate action under 37-1-308.

(2) Each health care licensing board shall solicit and submit to the department a list of licensed or certified health care or rehabilitative service professionals who have correctional health care experience and who are interested in participating on a team. A current board member may not participate on a review team. The department shall solicit from the administrators of the county detention centers and from the department of corrections names of licensed or certified health care or rehabilitative service providers who have correctional health care or rehabilitative services experience and are interested in participating on a review team. Each member of a review team must have at least 2 years of experience in providing health care or rehabilitative services in a correctional facility or program.

(3) Each correctional health care review team is composed of three members who shall represent health care and rehabilitative service providers who have provided health care or rehabilitative services to incarcerated persons. Two members of the review team must be providers of the same discipline and scope of practice as the provider against whom a complaint was filed, and the third member may be a provider of any other health care or rehabilitative services discipline. The members must be willing to serve without compensation. If available, a correctional health care professional employed by the department of corrections and appointed by the director of the department of corrections may participate on the review team, except when the provider against whom the complaint was filed was employed by the department of corrections.

(4) The members of a review team are appointed by the department from the listing of health care and rehabilitative service providers with correctional experience who have been submitted by each respective board, a county detention center administrator, or the department of corrections as provided in subsection (2). A review team shall meet at least twice a year. Any travel, lodging, meal, or miscellaneous costs incurred by a review team may be recovered through a memorandum of understanding with the agencies who provide medical services to inmates or may be assessed to the licensing or certifying boards of health care and rehabilitative service providers.

(5) The review team shall review each complaint with regard to the health care or rehabilitative services provider's scope of practice. A decision on whether or not to forward the complaint must be made by the majority of the review team. The review team shall submit a written response regarding the decision to the inmate, the county detention center administrator or the department of corrections, and the health care or rehabilitative services provider. If the decision is to not forward the complaint for action under 37-1-308, a record of the complaint may not be forwarded to any licensing or certifying board, but must be retained by the department.

History: En. Sec. 2, Ch. 375, L. 1999.

CHAPTER 2
GENERAL PROVISIONS RELATING TO HEALTH CARE PRACTITIONERS

Part 1 -- Dispensing of Drugs

37-2-101. Definitions.
37-2-102. Practices declared unlawful between drug companies and medical practitioners.
37-2-103. Practices declared unlawful between medical practitioners and pharmacies.
37-2-104. Dispensing of drugs by medical practitioners unlawful -- exceptions.
37-2-105. Duty of county attorneys.
37-2-106. Existing ownership of pharmacy.
37-2-107. Civil penalty for unreadable prescription.
37-2-108 through 37-2-110 reserved.
37-2-111. Repealed.

Part 2 -- Nonliability for Peer Review

37-2-201. Nonliability -- evidential privilege -- application to nonprofit corporations.

Part 3 -- Miscellaneous Provisions

37-2-301. Duty to report cases of communicable disease.
37-2-302. Gunshot or stab wounds to be reported.
37-2-303. Immunity from liability.
37-2-304 through 37-2-310 reserved.
37-2-311. Report to department of justice by physician.
37-2-312. Physician's immunity from liability.
37-2-313 and 37-2-314 reserved.
37-2-315. Direct billing for anatomic pathology services.

Part 1
Dispensing of Drugs

Part Cross-References

Pharmacy, Title 37, ch. 7.
Dangerous drugs, Title 45, ch. 9.
Model Drug Paraphernalia Act, Title 45, ch. 10.
Controlled substances, Title 50, ch. 32.

37-2-101. Definitions. As used in this part, the following definitions apply:

(1) "Community pharmacy", when used in relation to a medical practitioner, means a pharmacy situated within 10 miles of any place at which the medical practitioner maintains an office for professional practice.

(2) "Device" means any instrument, apparatus, or contrivance intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans;

(b) to affect the structure or any function of the body of humans.

(3) "Drug" has the same meaning as provided in 37-7-101.

(4) "Drug company" means any person engaged in the manufacturing, processing, packaging, or distribution of drugs. The term does not include a pharmacy.

(5) "Medical practitioner" means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, podiatry, optometry, or a nursing specialty as described in 37-8-202 and in the licensed practice to administer or prescribe drugs.

(6) "Person" means any individual and any partnership, firm, corporation, association, or other business entity.

(7) "Pharmacy" has the same meaning as provided in 37-7-101.

(8) "State" means the state of Montana or any political subdivision of the state.

History: En. Sec. 1, Ch. 311, L. 1971; R.C.M. 1947, 27-901; amd. Sec. 2, Ch. 379, L. 1981; amd. Sec. 1, Ch. 588, L. 1987; amd. Sec. 43, Ch. 83, L. 1989; amd. Sec. 1, Ch. 444, L. 1989; amd. Sec. 2, Ch. 388, L. 2001; amd. Sec. 17, Ch. 467, L. 2005.

37-2-102. Practices declared unlawful between drug companies and medical practitioners. It shall be unlawful:

(1) for a drug company to give or sell to a medical practitioner any legal or beneficial interest in the company or in the income thereof with the intent or for the purpose of inducing such medical practitioner to prescribe to his patients the drugs of the company. The giving or selling of such interest by the company to a medical practitioner without such interest first having been publicly offered to the general public shall be prima facie evidence of such intent or purpose.

(2) for a medical practitioner to acquire or own a legal or beneficial interest in any drug company, provided it shall not be unlawful for a medical practitioner to acquire or own such an interest solely for investment; and the acquisition of an interest which is publicly offered to the general public shall be prima facie evidence of its acquisition solely for investment;

(3) for a medical practitioner to solicit or to knowingly receive from a drug company or for a drug company to pay or to promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon the volume of wholesale or retail sales, at any place, of drugs manufactured, processed, packaged, or distributed by the company.

History: En. Sec. 2, Ch. 311, L. 1971; R.C.M. 1947, 27-902.

37-2-103. Practices declared unlawful between medical practitioners and pharmacies. (1) It shall be unlawful for a medical practitioner to own, directly or indirectly, a community pharmacy. Nothing in this subsection shall prohibit a medical practitioner from dispensing a drug which he is permitted to dispense under 37-2-104.

(2) It shall be unlawful for a medical practitioner directly or indirectly to solicit or to knowingly receive from a community pharmacy or for a community pharmacy knowingly to pay or promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon income received or resulting from the sale or furnishing by such community pharmacy of drugs to patients of any medical practitioner.

History: En. Sec. 4, Ch. 311, L. 1971; R.C.M. 1947, 27-904.

37-2-104. Dispensing of drugs by medical practitioners unlawful -- exceptions. (1) Except as otherwise provided by this section, it is unlawful for a medical practitioner to engage, directly or indirectly, in the dispensing of drugs.

(2) This section does not prohibit:

(a) a medical practitioner from furnishing a patient any drug in an emergency;

(b) the administration of a unit dose of a drug to a patient by or under the supervision of a medical practitioner;

(c) dispensing a drug to a patient by a medical practitioner whenever there is no community pharmacy available to the patient;

(d) the dispensing of drugs occasionally, but not as a usual course of doing business, by a medical practitioner;

(e) a medical practitioner from dispensing drug samples;

(f) the dispensing of factory prepackaged oral contraceptives by a registered nurse employed by a family planning clinic under contract with the department of public health and human services if the dispensing is in accordance with:

(i) a physician's written protocol specifying the circumstances under which dispensing is appropriate; and

(ii) the drug labeling, storage, and recordkeeping requirements of the board of pharmacy;

(g) a contract physician at an urban Indian clinic from dispensing drugs to qualified patients of the clinic. The clinic may not stock or dispense any dangerous drug, as defined in 50-32-101, or any

controlled substance. The contract physician may not delegate the authority to dispense any drug for which a prescription is required under 21 U.S.C. 353(b).

History: En. Sec. 3, Ch. 311, L. 1971; R.C.M. 1947, 27-903; amd. Sec. 1, Ch. 22, L. 1979; amd. Sec. 1, Ch. 472, L. 1989; amd. Sec. 1, Ch. 445, L. 1991; amd. Sec. 57, Ch. 418, L. 1995; amd. Sec. 86, Ch. 546, L. 1995.

37-2-105. Duty of county attorneys. It shall be the duty of the county attorneys in the counties of the state, under the direction of the attorney general, to institute appropriate proceedings to prevent and restrain such violations. Such proceedings may be by way of complaint setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. Upon the filing of a complaint under this section and the service thereof upon the defendants named therein, the court shall proceed as soon as possible to the hearing and determination of the action.

History: En. Sec. 5, Ch. 311, L. 1971; R.C.M. 1947, 27-905.

Cross-References

Duty of Attorney General to supervise County Attorneys, 2-15-501.
Duties of County Attorneys generally, Title 7, ch. 4, part 27.
Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20).
Injunctions generally, Title 27, ch. 19.

37-2-106. Existing ownership of pharmacy. The provisions of 37-2-103(1) shall not apply to a medical practitioner as to any interest which he owns as set forth in said subsection on July 1, 1971, provided that transfer of this interest to another person shall result in immediate termination of such exemption.

History: En. Sec. 6, Ch. 311, L. 1971; R.C.M. 1947, 27-906.

Cross-References

Store license for pharmacy, 37-7-321.

37-2-107. Civil penalty for unreadable prescription. (1) A medical practitioner may not issue a written prescription, to be delivered to a patient or pharmacy, in such a manner that the name of the drug, the dosage, the instructions for use, the printed name or other identifying letters or numbers unique to the medical practitioner, and, if required, the federal drug enforcement agency identifying number cannot be read by a registered pharmacist licensed to practice in this state.

(2) Any person may file a complaint alleging a violation of subsection (1) with the board that licensed the medical practitioner who issued the prescription. The board may investigate the complaint and take any action and impose any sanction allowed by the statutes relating to the board and rules adopted by the board. Each board licensing a medical practitioner shall adopt rules to implement this section.

(3) The board may refer the complaint to the county attorney of the county in which the prescription was issued, whether or not the board itself has taken any action or imposed any sanction. A county attorney may not file an action alleging a violation of subsection (1) unless a complaint has been referred to the county attorney by the medical practitioner's licensing board.

(4) A medical practitioner who violates subsection (1) is guilty of a civil offense and may be punished by a civil penalty of not more than $500 for each prescription.

History: En. Sec. 1, Ch. 436, L. 2005.

37-2-108 through 37-2-110 reserved.

37-2-111. Repealed. Sec. 75, Ch. 492, L. 2001.

History: En. Sec. 6, Ch. 202, L. 1921; re-en. Sec. 3194, R.C.M. 1921; re-en. Sec. 3194, R.C.M. 1935; amd. Sec. 8, Ch. 101, L. 1977; R.C.M. 1947, 66-1516.

Part 2
Nonliability for Peer Review

Part Cross-References

Libel and slander, Title 27, ch. 1, part 8.
Montana Medical Legal Panel created, 27-6-104.
Licensing investigation and review -- record access, 37-1-135.
Reporting obligations of physicians, Title 37, ch. 3, part 4.
Health care information, Title 50, ch. 16.

37-2-201. Nonliability -- evidential privilege -- application to nonprofit corporations. (1) No member of a utilization review or medical ethics review committee of a hospital or long-term care facility or of a professional utilization committee, peer review committee, medical ethics review committee, or professional standards review committee of a society composed of persons licensed to practice a health care profession is liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to him after reasonable effort to obtain the facts of the matter for which the action is taken or a recommendation is made.

(2) The proceedings and records of professional utilization, peer review, medical ethics review, and professional standards review committees are not subject to discovery or introduction into evidence in any proceeding. However, information otherwise discoverable or admissible from an original source is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before the committee, nor is a member of the committee or other person appearing before it to be prevented from testifying as to matters within his knowledge, but he cannot be questioned about his testimony or other proceedings before the committee or about opinions or other actions of the committee or any member thereof.

(3) This section also applies to any member, agent, or employee of a nonprofit corporation engaged in performing the functions of a peer review, medical ethics review, or professional standards review committee.

History: En. 66-1052 by Sec. 1, Ch. 226, L. 1975; amd. Sec. 1, Ch. 267, L. 1977; R.C.M. 1947, 66-1052; amd. Sec. 2, Ch. 22, L. 1979; amd. Sec. 1, Ch. 380, L. 1989.

Part 3
Miscellaneous Provisions

Part Cross-References

Doctor-patient privilege, 26-1-805.
Libel and slander, Title 27, ch. 1, part 8.
Report of fetal death that occurs outside licensed medical facility, 46-4-114.
Communicable disease defined, 50-1-101.
Powers of Department relating to communicable diseases, 50-1-202.
Report of exposure to infectious disease, Title 50, ch. 16, part 7.
Report of exposure to infectious disease -- immunity from liability, 50-16-704.
Revocation, suspension, or cancellation of driver's license, Title 61, ch. 5, part 2.

37-2-301. Duty to report cases of communicable disease. (1) If a physician or other practitioner of the healing arts examines or treats a person who the physician or other practitioner believes has a communicable disease or a disease declared reportable by the department of public health and human services, the physician or other practitioner shall immediately report the case to the local health officer. The report must be in the form and contain the information prescribed by the department.

(2) A person who violates the provisions of this section or rules adopted by the department under the provisions of this section is guilty of a misdemeanor. On conviction, the person shall be fined not less than $10 or more than $500, imprisoned for not more than 90 days, or both. Each day of violation constitutes a separate offense. Fines, except those collected by a justice's court, must be paid to the county treasurer of the county in which the violation occurs.

History: (1)En. Sec. 91, Ch. 197, L. 1967; Sec. 69-4514, R.C.M. 1947; (2)En. Sec. 96, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; amd. Sec. 3, Ch. 273, L. 1975; Sec. 69-4519, R.C.M. 1947; R.C.M. 1947, 69-4514, 69-4519(part); amd. Sec. 21, Ch. 557, L. 1987; amd. Sec. 58, Ch. 418, L. 1995; amd. Sec. 87, Ch. 546, L. 1995.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

37-2-302. Gunshot or stab wounds to be reported. The physician, nurse, or other person licensed to practice a health care profession treating the victim of a gunshot wound or stabbing shall make a report to a law enforcement officer by the fastest possible means. Within 24 hours after initial treatment or first observation of the wound, a written report shall be submitted, including the name and address of the victim, if known, and shall be sent by regular mail.

History: En. 66-1050 by Sec. 1, Ch. 303, L. 1974; R.C.M. 1947, 66-1050.

37-2-303. Immunity from liability. A physician or other person reporting pursuant to 37-2-302 shall be presumed to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, unless he acted in bad faith or with malicious purpose.

History: En. 66-1051 by Sec. 2, Ch. 303, L. 1974; R.C.M. 1947, 66-1051.

37-2-304 through 37-2-310 reserved.

37-2-311. Report to department of justice by physician. (1) Any physician who diagnoses a physical or mental condition that, in the physician's judgment, will significantly impair a person's ability to safely operate a motor vehicle may voluntarily report the person's name and other information relevant to his condition to the department of justice. The department, upon receiving the report, shall require the person so reported to be examined or investigated as provided for in 61-5-207.

(2) (a) The physician's report may be introduced as evidence in any proceeding involving the granting, suspension, or revocation of the person's driver's license, driving privilege, or commercial driver's license before the department or a court.

(b) The physician's report may not be utilized in a criminal proceeding or in a civil proceeding, other than as provided in this subsection, without the consent of the patient.

History: En. Sec. 1, Ch. 126, L. 1983; amd. Sec. 1, Ch. 419, L. 1991.

37-2-312. Physician's immunity from liability. Any physician reporting in good faith is immune from any liability, civil or criminal, that otherwise might result by reason of his actions pursuant to 37-2-311 except for damages occasioned by gross negligence. No action may be brought against a physician for not making a report pursuant to 37-2-311.

History: En. Sec. 2, Ch. 126, L. 1983.

37-2-313 and 37-2-314 reserved.

37-2-315. Direct billing for anatomic pathology services. (1) A clinical laboratory or physician providing anatomic pathology services for a patient may present a bill or demand for payment for services furnished by the laboratory or physician only to the following entities:

(a) the patient;

(b) the patient's insurer or other third-party payor;

(c) the health care facility ordering the services;

(d) a referring laboratory, other than a laboratory in which the patient's physician or other practitioner of the healing arts has a financial interest; or

(e) a state or federal agency or the agent of that agency, on behalf of the patient.

(2) Except as provided in subsection (5), a physician or other practitioner of the healing arts licensed pursuant to Title 37 may not directly or indirectly bill or charge for or solicit payment for anatomic pathology services unless those services were provided personally by the physician or other practitioner or under the direct supervision of a physician providing that supervision for the purposes of 42 U.S.C. 263a.

(3) The following entities are not required to reimburse a physician for a bill or charge made in violation of this section:

(a) a patient;

(b) an insurer;

(c) a health care facility; or

(d) another third-party payor.

(4) This section does not require an assignment of benefits for anatomic pathology services.

(5) This section does not prohibit billing between laboratories, other than laboratories in which the patient's physician or other practitioner of the healing arts has a financial interest, for anatomic pathology services in instances requiring that a sample be sent to a specialist at another laboratory.

(6) This section does not prohibit a clinical laboratory or physician providing anatomic pathology services for a patient from presenting a bill or demand for payment for those services or presenting separate bills or demands for payment to a payor when allowed by this section.

(7) The licensing entity for a physician or other practitioner of the healing arts licensed pursuant to Title 37 may revoke, suspend, or refuse to renew the license of a physician or other practitioner of the healing arts who violates a provision of this section.

(8) As used in this section, the following definitions apply:

(a) "Anatomic pathology services" means:

(i) histopathology or surgical pathology, meaning the gross examination of, histologic processing of, or microscopic examination of human organ tissue performed by a physician or under the supervision of a physician;

(ii) cytopathology, meaning the examination of human cells, from fluids, aspirates, washings, brushings, or smears, including the pap test examination performed by a physician or under the supervision of a physician;

(iii) hematology, meaning the microscopic evaluation of human bone marrow aspirates and biopsies performed by a physician or under the supervision of a physician and peripheral human blood smears when the attending or treating physician or other practitioner of the healing arts or a technologist requests that a blood smear be reviewed by a pathologist;

(iv) subcellular pathology and molecular pathology; or

(v) blood bank services performed by a pathologist.

(b) "Clinical laboratory" or "laboratory" means a facility for the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of human beings or the assessment of the health of human beings.

(c) "Health care facility" has the meaning provided in 50-5-101.

(d) "Insurer" includes a disability insurer, a health services corporation, a health maintenance organization, and a fraternal benefit society.

(e) "Patient" has the meaning provided in 50-16-504.

(f) "Physician" has the meaning provided in 37-3-102.

History: En. Sec. 1, Ch. 266, L. 2005.

CHAPTER 7
PHARMACY

Part 1 -- General

37-7-101. Definitions.
37-7-102. Practice subject to regulation.
37-7-103. Exemptions.
37-7-104. Qualifications of employee hired to assist board.

Part 2 -- Board of Pharmacy

37-7-201. Organization -- powers and duties.
37-7-202. Salaries and expenses of board members.
37-7-203. Repealed.
37-7-204. Posting of prescription drug prices -- adoption of list by rule.

Part 3 -- Licensing

37-7-301. Unlawful practice.
37-7-302. Qualifications -- display of license.
37-7-303. Repealed.
37-7-304. Repealed.
37-7-305. Repealed.
37-7-306 reserved.
37-7-307. Utilization plan -- contents -- responsibility of pharmacist.
37-7-308. Preparation and approval of utilization plan -- revocation of or refusal to renew plan -- contested case hearing.
37-7-309. Utilization plan approval fee -- renewal of approval -- renewal fee.
37-7-310 reserved.
37-7-311. Repealed.
37-7-312 through 37-7-320 reserved.
37-7-321. Certified pharmacy license -- display.
37-7-322. Use of words pharmacy, apothecary, drug store, or chemist shop for advertising.
37-7-323. Penalty -- enforcement.

37-7-324. Deposit of fees and fines.

Part 4 -- Prescriptions Regulated--Review--Counseling

37-7-401. Restrictions on prescriptions.
37-7-402. Penalty for violation of provisions on sale or prescription of opiates, coding, refilling.
37-7-403. Repealed.
37-7-404. Repealed.
37-7-405. Repealed.
37-7-406. Standards for prospective drug utilization review and patient counseling.
37-7-407. Penalty.

Part 5 -- Drug Product Selection

37-7-501. Short title.
37-7-502. Definitions.
37-7-503. Rulemaking.
37-7-504. General prohibition of drug substitution.
37-7-505. Product selection permitted -- limitation.
37-7-506. Notice to purchaser.
37-7-507. Savings passed on.
37-7-508. Product selection not practice of medicine.
37-7-509. Limitations on liability.
37-7-510. Penalty.

Part 6 -- Wholesale Drug Distributors--Licensing

37-7-601. Scope and purpose.
37-7-602. Definitions.
37-7-603. Prohibited purchase or receipt of drugs -- restrictions on wholesale drug distributors -- penalty.
37-7-604. Wholesale drug distributor licensing requirements -- fee -- federal compliance.
37-7-605. Out-of-state wholesale drug distributor licensing requirements.
37-7-606. Licenses.
37-7-607. Repealed.
37-7-608. Repealed.
37-7-609. Board access to wholesale drug records.
37-7-610. Rulemaking authority.

Part 7 -- Out-of-State Mail Service Pharmacies

37-7-701. Legislative declaration.
37-7-702. Out-of-state mail service pharmacy defined.
37-7-703. Registration requirements.
37-7-704. Inspections.
37-7-705. Product selection of prescribed drugs -- notification.
37-7-706. Patient communication -- telephone service.
37-7-707 through 37-7-709 reserved.
37-7-710. Repealed.
37-7-711. Penalty.
37-7-712. Rulemaking authority.

Parts 8 through 10 reserved

Part 11 -- Peer Review

37-7-1101. Nonliability for peer review.

Parts 12 and 13 reserved

Part 14 -- Donated Drug Program

37-7-1401. Department of public health and human services and board of pharmacy to create program for donation of unused prescription drugs -- rulemaking required.
37-7-1402. Long-term care facilities to delete identifying information from donated prescription drugs.
37-7-1403 through 37-7-1407 reserved.
37-7-1408. Immunity for long-term care patients and facilities donating prescription drugs.

Chapter Cross-References

Professional service corporations, Title 35, ch. 4.
General provisions relating to health care practitioners, Title 37, ch. 2.
Use of diagnostic drugs by optometrist not prohibited, 37-10-103.
Dangerous drugs, Title 45, ch. 9.
Controlled substances, Title 50, ch. 32.

Part 1
General

37-7-101. Definitions. As used in parts 1 through 7 of this chapter, the following definitions apply:

(1) (a) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or any other means.

(b) The term does not include immunization by injection for children under 18 years of age.

(2) "Board" means the board of pharmacy provided for in 2-15-1733.

(3) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(4) "Collaborative pharmacy practice" means the practice of pharmacy by a pharmacist who has agreed to work in conjunction with one or more prescribers, on a voluntary basis and under protocol, and who may perform certain patient care functions under certain specified conditions or limitations authorized by the prescriber.

(5) "Collaborative pharmacy practice agreement" means a written and signed agreement between one or more pharmacists and one or more prescribers that provides for collaborative pharmacy practice for the purpose of drug therapy management of patients.

(6) "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

(7) "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device based on:

(a) a practitioner's prescription drug order;

(b) a professional practice relationship between a practitioner, pharmacist, and patient;

(c) research, instruction, or chemical analysis, but not for sale or dispensing; or

(d) the preparation of drugs or devices based on routine, regularly observed prescribing patterns.

(8) "Confidential patient information" means privileged information accessed by, maintained by, or transmitted to a pharmacist in patient records or that is communicated to the patient as part of patient counseling.

(9) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(10) "Device" has the same meaning as defined in 37-2-101.

(11) "Dispense" or "dispensing" means the interpretation, evaluation, and implementation of a prescription drug order, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for administration to or use by a patient.

(12) "Distribute" means the delivery of a drug or device by means other than administering or dispensing.

(13) "Drug" means a substance:

(a) recognized as a drug in any official compendium or supplement;

(b) intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(c) other than food, intended to affect the structure or function of the body of humans or animals; and

(d) intended for use as a component of a substance specified in subsection (13)(a), (13)(b), or (13)(c).

(14) "Drug utilization review" means an evaluation of a prescription drug order and patient records for duplication of therapy, interactions, proper utilization, and optimum therapeutic outcomes. The term includes but is not limited to the following evaluations:

(a) known allergies;

(b) rational therapy contraindications;

(c) reasonable dose and route administration;

(d) reasonable directions for use;

(e) drug-drug interactions;

(f) drug-food interactions;

(g) drug-disease interactions; and

(h) adverse drug reactions.

(15) "Equivalent drug product" means a drug product that has the same established name, active ingredient or ingredients, strength or concentration, dosage form, and route of administration and meets the same standards as another drug product as determined by any official compendium or supplement. Equivalent drug products may differ in shape, scoring, configuration, packaging, excipients, and expiration time.

(16) "Intern" means:

(a) a person who is licensed by the state to engage in the practice of pharmacy while under the personal supervision of a preceptor and who is satisfactorily progressing toward meeting the requirements for licensure as a pharmacist;

(b) a graduate of an accredited college of pharmacy who is licensed by the state for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist;

(c) a qualified applicant awaiting examination for licensure; or

(d) a person participating in a residency or fellowship program.

(17) (a) "Manufacturing" means the production, preparation, propogation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis.

(b) Manufacturing includes:

(i) any packaging or repackaging;

(ii) labeling or relabeling;

(iii) promoting or marketing; and

(iv) preparing and promoting commercially available products from bulk compounds for resale by pharmacies, practitioners, or other persons.

(18) "Medicine" means a remedial agent that has the property of curing, preventing, treating, or mitigating diseases or which is used for this purpose.

(19) "Patient counseling" means the communication by the pharmacist of information, as defined by the rules of the board, to the patient or caregiver in order to ensure the proper use of drugs or devices.

(20) "Person" includes an individual, partnership, corporation, association, or other legal entity.

(21) "Pharmaceutical care" means the provision of drug therapy and other patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of disease process.

(22) "Pharmacist" means a person licensed by the state to engage in the practice of pharmacy and who may affix to the person's name the term "R.Ph.".

(23) "Pharmacy" means an established location, either physical or electronic, registered by the board where drugs or devices are dispensed with pharmaceutical care or where pharmaceutical care is provided.

(24) "Pharmacy technician" means an individual who assists a pharmacist in the practice of pharmacy.

(25) "Poison" means a substance that, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or that destroys living tissue with which it comes in contact.

(26) "Practice of pharmacy" means:

(a) interpreting, evaluating, and implementing prescriber orders;

(b) administering drugs and devices pursuant to a collaborative practice agreement and compounding, labeling, dispensing, and distributing drugs and devices, including patient counseling;

(c) properly and safely procuring, storing, distributing, and disposing of drugs and devices and maintaining proper records;

(d) monitoring drug therapy and use;

(e) initiating or modifying drug therapy in accordance with collaborative pharmacy practice agreements established and approved by health care facilities or voluntary agreements with prescribers;

(f) participating in quality assurance and performance improvement activities;

(g) providing information on drugs, dietary supplements, and devices to patients, the public, and other health care providers; and

(h) participating in scientific or clinical research as an investigator or in collaboration with other investigators.

(27) "Practice telepharmacy" means to provide pharmaceutical care through the use of information technology to patients at a distance.

(28) "Preceptor" means an individual who is registered by the board and participates in the instructional training of a pharmacy intern.

(29) "Prescriber" has the same meaning as provided in 37-7-502.

(30) "Prescription drug" means any drug that is required by federal law or regulation to be dispensed only by a prescription subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353).

(31) "Prescription drug order" means an order from a prescriber for a drug or device that is communicated directly or indirectly by the prescriber to the furnisher by means of a signed order, by electronic transmission, in person, or by telephone. The order must include the name and address of the prescriber, the prescriber's license classification, the name and address of the patient, the name, strength, and quantity of the drug, drugs, or device prescribed, the directions for use, and the date of its issue. These stipulations apply to written, oral, electronically transmitted, and telephoned prescriptions and orders derived from collaborative pharmacy practice.

(32) "Utilization plan" means a plan under which a pharmacist may use the services of a pharmacy technician in the practice of pharmacy to perform tasks that:

(a) do not require the exercise of the pharmacist's independent professional judgment; and

(b) are verified by the pharmacist.

(33) "Wholesale" means a sale for the purpose of resale.

History: En. Sec. 2, Ch. 175, L. 1939; amd. Sec. 1, Ch. 33, L. 1951; amd. Sec. 2, Ch. 241, L. 1971; amd. Sec. 148, Ch. 350, L. 1974; amd. Sec. 1, Ch. 439, L. 1977; R.C.M. 1947, 66-1502; amd. Sec. 7, Ch. 22, L. 1979; amd. Sec. 3, Ch. 379, L. 1981; amd. Sec. 1, Ch. 247, L. 1983; amd. Sec. 1, Ch. 219, L. 1991; amd. Sec. 36, Ch. 429, L. 1995; amd. Sec. 3, Ch. 388, L. 2001; amd. Sec. 116, Ch. 483, L. 2001.

37-7-102. Practice subject to regulation. The practice of pharmacy is a professional practice affecting the public health, safety, and welfare and is subject to regulation and control in the public interest.

History: En. Sec. 647, Pol. C. 1895; re-en. Sec. 1629, Rev. C. 1907; re-en. Sec. 8, Ch. 134, L. 1915; re-en. Sec. 3177, R.C.M. 1921; re-en. Sec. 3177, R.C.M. 1935; amd. Sec. 7, Ch. 175, L. 1939; amd. Sec. 1, Ch. 70, L. 1957; amd. Sec. 5, Ch. 241, L. 1971; amd. Sec. 153, Ch. 350, L. 1974; amd. Sec. 2, Ch. 439, L. 1977; R.C.M. 1947, 66-1507(part).

37-7-103. (Temporary) Exemptions. Subject only to 37-7-401 and 37-7-402, this chapter does not:

(1) subject a person who is licensed in this state to practice medicine, dentistry, or veterinary medicine to inspection by the board, prevent the person from compounding or using drugs, medicines, chemicals, or poisons in the person's practice, or prevent a person who is licensed to practice medicine from furnishing to a patient drugs, medicines, chemicals, or poisons that the person considers proper in the treatment of the patient;

(2) prevent the sale of drugs, medicines, chemicals, or poisons at wholesale;

(3) prevent the sale of drugs, chemicals, or poisons at either wholesale or retail for use for commercial purposes or in the arts;

(4) change any of the provisions of this code relating to the sale of insecticides and fungicides;

(5) prevent the sale of common household preparations and other drugs if the stores selling them are licensed under the terms of this chapter;

(6) apply to or interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature for use for nonmedicinal purposes;

(7) prevent a registered nurse employed by a family planning clinic under contract with the department of public health and human services from dispensing factory prepackaged oral contraceptives if the dispensing is in accordance with a physician's written protocol specifying the circumstances under which dispensing is appropriate and is in accordance with the board's requirements for labeling, storage, and recordkeeping of drugs; or

(8) prevent a certified agency from possessing, or a certified euthanasia technician or support personnel under the supervision of the employing veterinarian from administering, any controlled substance authorized by the board of veterinary medicine for the purpose of euthanasia pursuant to Title 37, chapter 18, part 6. (Terminates January 1, 2008--sec. 11, Ch. 60, L. 2003.)

37-7-103. (Effective January 1, 2008) Exemptions. Subject only to 37-7-401 and 37-7-402, this chapter does not:

(1) subject a person who is licensed in this state to practice medicine, dentistry, or veterinary medicine to inspection by the board, prevent the person from compounding or using drugs, medicines, chemicals, or poisons in the person's practice, or prevent a person who is licensed to practice medicine from furnishing to a patient drugs, medicines, chemicals, or poisons that the person considers proper in the treatment of the patient;

(2) prevent the sale of drugs, medicines, chemicals, or poisons at wholesale;

(3) prevent the sale of drugs, chemicals, or poisons either at wholesale or retail for use for commercial purposes or in the arts or changes any of the provisions of this code relating to the sale of insecticides and fungicides, and does not prevent the sale of common household preparations and other drugs if the stores selling them are licensed under the terms of this chapter;

(4) apply to or interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature for use for nonmedicinal purposes;

(5) prevent a registered nurse employed by a family planning clinic under contract with the department of public health and human services from dispensing factory prepackaged oral contraceptives if the dispensing is in accordance with a physician's written protocol specifying the circumstances under which dispensing is appropriate and is in accordance with the board of pharmacy's requirements for labeling, storage, and recordkeeping of drugs.

History: En. Sec. 14, Ch. 175, L. 1939; amd. Sec. 10, Ch. 101, L. 1977; R.C.M. 1947, 66-1525; amd. Sec. 2, Ch. 472, L. 1989; amd. Sec. 59, Ch. 418, L. 1995; amd. Sec. 88, Ch. 546, L. 1995; amd. Sec. 7, Ch. 60, L. 2003.

Cross-References

Licensing of physicians, Title 37, ch. 3, part 3.

Licensing of dentists, Title 37, ch. 4, part 3.

Licensing -- veterinary medicine, Title 37, ch. 18, part 3.

Pesticides, Title 80, ch. 8.

37-7-104. Qualifications of employee hired to assist board. A person hired by the department to enter and inspect an establishment under this chapter must be:

(1) a citizen of the United States and a resident of this state; and

(2) a pharmacist registered under this chapter.

History: En. 66-1521.1 by Sec. 158, Ch. 350, L. 1974; R.C.M. 1947, 66-1521.1; amd. Sec. 8, Ch. 22, L. 1979; amd. Sec. 37, Ch. 467, L. 2005.

Cross-References

Duties of Department, 37-1-101.

Part 2
Board of Pharmacy

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Open meetings, Title 2, ch. 3, part 2.
Meeting defined, 2-3-202.
Allocation of boards for administrative purposes, 2-15-121.
Quasi-judicial boards, 2-15-124.
Board established, 2-15-1733.
Duties of Department, Director, and boards, Title 37, ch. 1, part 1.
Disrupting meeting as disorderly conduct, 45-8-101.

37-7-201. Organization -- powers and duties. (1) The board shall meet at least once a year to transact its business. The board shall annually elect from its members a president, vice president, and secretary.

(2) The board shall regulate the practice of pharmacy in this state, including but not limited to:

(a) establishing minimum standards for:

(i) equipment necessary in and for a pharmacy;

(ii) the purity and quality of drugs, devices, and other materials dispensed within the state through the practice of pharmacy, using an official compendium recognized by the board or current practical standards;

(iii) specifications for the facilities, environment, supplies, technical equipment, personnel, and procedures for the storage, compounding, or dispensing of drugs and devices;

(iv) monitoring drug therapy; and

(v) maintaining the integrity and confidentiality of prescription information and other confidential patient information;

(b) requesting the department to inspect, at reasonable times:

(i) places where drugs, medicines, chemicals, or poisons are sold, vended, given away, compounded, dispensed, or manufactured; and

(ii) the appropriate records and the license of any person engaged in the practice of pharmacy for the purpose of determining whether any laws governing the legal distribution of drugs or devices or the practice of pharmacy are being violated. The board shall cooperate with all agencies charged with the enforcement of the laws of the United States, other states, or this state relating to drugs, devices, and the practice of pharmacy. It is a misdemeanor for a person to refuse to permit or otherwise prevent the department from entering these places and making an inspection.

(c) regulating:

(i) the training, qualifications, employment, licensure, and practice of interns;

(ii) the training, qualifications, employment, and registration of pharmacy technicians; and

(iii) under therapeutic classification, the sale and labeling of drugs, devices, medicines, chemicals, and poisons;

(d) examining applicants and issuing and renewing licenses of:

(i) applicants whom the board considers qualified under this chapter to practice pharmacy;

(ii) pharmacies and certain stores under this chapter;

(iii) wholesale drug distributors; and

(iv) persons engaged in the manufacture and distribution of drugs or devices;

(e) issuing certificates of "certified pharmacy" under this chapter;

(f) establishing and collecting license and registration fees;

(g) approving pharmacy practice initiatives that improve the quality of, or access to, pharmaceutical care but that fall outside the scope of this chapter. This subsection (2)(g) may not be construed to expand on the definition of the practice of pharmacy as defined in 37-7-101;

(h) making rules for the conduct of its business;

(i) performing other duties and exercising other powers as this chapter requires;

(j) adopting and authorizing the department to publish rules for carrying out and enforcing parts 1 through 7 of this chapter, including but not limited to:

(i) requirements and qualifications for the transfer of board-issued licenses;

(ii) minimum standards for pharmacy internship programs and qualifications for licensing pharmacy interns;

(iii) qualifications and procedures for registering pharmacy technicians; and

(iv) requirements and procedures necessary to allow a pharmacy licensed in another jurisdiction to be registered to practice telepharmacy across state lines.

(3) The board may:

(a) join professional organizations and associations organized exclusively to promote the improvement of standards of the practice of pharmacy for the protection of the health and welfare of the public and whose activities assist and facilitate the work of the board; and

(b) establish standards of care for patients concerning health care services that a patient may expect with regard to pharmaceutical care.

History: Ap. p. Sec. 644, Pol. C. 1895; re-en. Sec. 1626, Rev. C. 1907; re-en. Sec. 5, Ch. 134, L. 1915; re-en. Sec. 3174, R.C.M. 1921; re-en. Sec. 3174, R.C.M. 1935; amd. Sec. 4, Ch. 175, L. 1939; amd. Sec. 25, Ch. 93, L. 1969; amd. Sec. 3, Ch. 241, L. 1971; amd. Sec. 150, Ch. 350, L. 1974; Sec. 66-1504, R.C.M. 1947; Ap. p. Sec. 646, Pol. C. 1895; re-en. Sec. 1628, Rev. C. 1907; re-en. Sec. 7, Ch. 134, L. 1915; re-en. Sec. 3176, R.C.M. 1921; re-en. Sec. 3176, R.C.M. 1935; amd. Sec. 6, Ch. 175, L. 1939; amd. Sec. 1, Ch. 81, L. 1969; amd. Sec. 4, Ch. 168, L. 1971; amd. Sec. 4, Ch. 241, L. 1971; amd. Sec. 1, Ch. 71, L. 1974; amd. Sec. 152, Ch. 350, L. 1974; amd. Sec. 7, Ch. 533, L. 1977; Sec. 66-1506, R.C.M. 1947; R.C.M. 1947, 66-1504(1), (2)(a) thru (2)(f), (2)(h) thru (2)(j), (3), 66-1506(part); amd. Sec. 4, Ch. 379, L. 1981; amd. Sec. 1, Ch. 134, L. 1991; amd. Sec. 4, Ch. 388, L. 2001.

37-7-202. Salaries and expenses of board members. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 645, Pol. C. 1895; re-en. Sec. 1627, Rev. C. 1907; re-en. Sec. 6, Ch. 134, L. 1915; re-en. Sec. 3175, R.C.M. 1921; re-en. Sec. 3175, R.C.M. 1935; amd. Sec. 5, Ch. 175, L. 1939; amd. Sec. 26, Ch. 177, L. 1965; amd. Sec. 1, Ch. 82, L. 1969; amd. Sec. 1, Ch. 72, L. 1974; amd. Sec. 151, Ch. 350, L. 1974; amd. Sec. 34, Ch. 439, L. 1975; R.C.M. 1947, 66-1505; amd. Sec. 12, Ch. 474, L. 1981.

37-7-203. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 4, Ch. 104, L. 1931; re-en. Sec. 3202.10, R.C.M. 1935; amd. Sec. 10, Ch. 175, L. 1939; amd. Sec. 8, Ch. 241, L. 1971; amd. Sec. 157, Ch. 350, L. 1974; R.C.M. 1947, 66-1521.

37-7-204. Posting of prescription drug prices -- adoption of list by rule. If the board of pharmacy finds after a public hearing that the interests of consumers will be furthered by its action, the board shall annually adopt by rule a list of 20 prescription drugs frequently prescribed for outpatient dispensing in Montana. A licensed pharmacy, other than in a hospital or nursing home, that sells prescription drugs shall monthly post its prices for the drugs on the list adopted by the board. The list must show the drugs by brand name and retail price and by generic name and retail price.

History: En. Sec. 1, Ch. 307, L. 1993.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to administer and grade examinations and to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review -- record access, 37-1-135.

Disciplinary authority of Boards -- injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

License not required for sale of pesticides, 80-8-207.

37-7-301. Unlawful practice. Except as provided in 37-7-307 through 37-7-309, it is unlawful for a person to:

(1) engage in the practice of pharmacy unless licensed by the board; or

(2) assist in the practice of pharmacy unless registered by the board as a pharmacy technician.

History: En. Sec. 640, Pol. C. 1895; re-en. Sec. 1622, Rev. C. 1907; re-en. Sec. 1, Ch. 134, L. 1915; re-en. Sec. 3170, R.C.M. 1921; re-en. Sec. 3170, R.C.M. 1935; amd. Sec. 1, Ch. 175, L. 1939; amd. Sec. 1, Ch. 241, L. 1971; R.C.M. 1947, 66-1501; amd. Sec. 9, Ch. 22, L. 1979; amd. Sec. 5, Ch. 379, L. 1981; amd. Sec. 2, Ch. 219, L. 1991; amd. Sec. 5, Ch. 388, L. 2001.

37-7-302. Qualifications -- display of license. (1) To be entitled to examination as a pharmacist, the applicant must be of good moral character and must have graduated and received the first professional undergraduate degree from the school of pharmacy of the university of Montana-Missoula or have received an accredited pharmacy degree that has been approved by the board. However, an applicant may not receive a registered pharmacist's license until the applicant has complied with the internship requirements established by the board.

(2) Each person licensed and registered under this chapter must receive from the department an appropriate license. The license must be conspicuously displayed at all times in the place of business.

History: En. Sec. 646, Pol. C. 1895; re-en. Sec. 1628, Rev. C. 1907; re-en. Sec. 7, Ch. 134, L. 1915; re-en. Sec. 3176, R.C.M. 1921; re-en. Sec. 3176, R.C.M. 1935; amd. Sec. 6, Ch. 175, L. 1939; amd. Sec. 1, Ch. 81, L. 1969; amd. Sec. 4, Ch. 168, L. 1971; amd. Sec. 4, Ch. 241, L. 1971; amd. Sec. 1, Ch. 71, L. 1974; amd. Sec. 152, Ch. 350, L. 1974; amd. Sec. 7, Ch. 533, L. 1977; R.C.M. 1947, 66-1506(part); amd. Sec. 2, Ch. 341, L. 1981; amd. Sec. 15, Ch. 345, L. 1981; amd. Sec. 6, Ch. 379, L. 1981; amd. Sec. 3, Ch. 247, L. 1983; amd. Sec. 37, Ch. 429, L. 1995; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 38, Ch. 467, L. 2005.

37-7-303. Repealed. Sec. 127, Ch. 467, L. 2005.

History: En. Sec. 647, Pol. C. 1895; re-en. Sec. 1629, Rev. C. 1907; re-en. Sec. 8, Ch. 134, L. 1915; re-en. Sec. 3177, R.C.M. 1921; re-en. Sec. 3177, R.C.M. 1935; amd. Sec. 7, Ch. 175, L. 1939; amd. Sec. 1, Ch. 70, L. 1957; amd. Sec. 5, Ch. 241, L. 1971; amd. Sec. 153, Ch. 350, L. 1974; amd. Sec. 2, Ch. 439, L. 1977; R.C.M. 1947, 66-1507(part); amd. Sec. 16, Ch. 345, L. 1981; amd. Sec. 7, Ch. 379, L. 1981; amd. Sec. 38, Ch. 429, L. 1995; amd. Sec. 10, Ch. 492, L. 1997; amd. Sec. 6, Ch. 388, L. 2001; amd. Sec. 13, Ch. 271, L. 2003.

37-7-304. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-1507.1 by Sec. 3, Ch. 439, L. 1977; R.C.M. 1947, 66-1507.1.

37-7-305. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. 66-1507.2 by Sec. 4, Ch. 439, L. 1977; R.C.M. 1947, 66-1507.2.

37-7-306 reserved.

37-7-307. Utilization plan -- contents -- responsibility of pharmacist. (1) A utilization plan must set forth:

(a) the name and qualifications of the supervising pharmacist or pharmacists;

(b) the nature and location of the supervising pharmacist's pharmacy practice;

(c) a summary of the tasks delegated by the pharmacist and the methods by which a supervising pharmacist may verify and document the tasks. "Verify" means the personal confirmation by a supervising pharmacist of the correctness of the tasks undertaken by the pharmacy technician.

(d) any other information the board considers relevant.

(2) The board shall approve a utilization plan if it determines that the duties to be delegated are:

(a) assigned, verified, and documented by the supervising pharmacist; and

(b) within the scope of the training and competence of the person to whom the authority is delegated.

(3) A supervising pharmacist is responsible for the actions of a pharmacy technician or auxiliary who performs services for the pharmacist under the terms of a utilization plan.

History: En. Sec. 3, Ch. 219, L. 1991.

37-7-308. Preparation and approval of utilization plan -- revocation of or refusal to renew plan -- contested case hearing. (1) A supervising pharmacist shall:

(a) prepare the utilization plan and submit a summary of the plan to the board for approval;

(b) keep on file in the pharmacy a copy of the utilization plan for inspection by the board; and

(c) annually review the utilization plan and provide documentation to the board that the plan accurately reflects the current use of the services of a pharmacy technician or auxiliary.

(2) The board shall refuse to approve or shall revoke or fail to renew approval of a utilization plan if it does not conform to the provisions of 37-7-307 through 37-7-309 and rules adopted under those sections.

(3) One year after the board revokes approval of a utilization plan, the supervising pharmacist may reapply for approval by complying with the requirements of 37-7-307 through 37-7-309 and with rules adopted under those sections.

(4) Before refusing to approve or before revoking or failing to renew approval of a utilization plan, the board shall provide the supervising pharmacist a reasonable time in which to supply additional information demonstrating compliance with the requirements of 37-7-307 through 37-7-309 and with rules adopted under those sections and the opportunity to request a hearing.

(5) If a supervising pharmacist requests a hearing, the board shall conduct the hearing in accordance with the contested case procedures in Title 2, chapter 4, part 6.

History: En. Sec. 4, Ch. 219, L. 1991.

37-7-309. Utilization plan approval fee -- renewal of approval -- renewal fee. (1) A pharmacy in which a pharmacist uses the services of a pharmacy technician or auxiliary under an approved utilization plan shall pay to the board a utilization plan approval fee in an amount set by the board as provided in 37-1-134. Payment must be made when the utilization plan is submitted and is not refundable.

(2) Approval of a utilization plan expires 1 year from the date of approval. The board shall grant renewal of approval upon payment of a renewal fee in an amount set by the board and documentation as required by 37-7-308(1)(c).

(3) The board may adopt fees, as provided in 37-1-134, for other costs associated with implementation of 37-7-307 through 37-7-309, including the costs of onsite inspection of the utilization plan at the participating pharmacy.

(4) The board shall deposit fees received in the state special revenue fund for use by the board in administration of 37-7-307 through 37-7-309, subject to 37-1-101(6).

History: En. Sec. 5, Ch. 219, L. 1991.

37-7-310 reserved.

37-7-311. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 644, Pol. C. 1895; re-en. Sec. 1626, Rev. C. 1907; re-en. Sec. 5, Ch. 134, L. 1915; re-en. Sec. 3174, R.C.M. 1921; re-en. Sec. 3174, R.C.M. 1935; amd. Sec. 4, Ch. 175, L. 1939; amd. Sec. 25, Ch. 93, L. 1969; amd. Sec. 3, Ch. 241, L. 1971; amd. Sec. 150, Ch. 350, L. 1974; R.C.M. 1947, 66-1504(2)(g); amd. Sec. 10, Ch. 22, L. 1979; amd. Sec. 4, Ch. 362, L. 1981; amd. Sec. 8, Ch. 379, L. 1981; amd. Sec. 4, Ch. 247, L. 1983.

37-7-312 through 37-7-320 reserved.

37-7-321. Certified pharmacy license -- display. The board shall provide for the original certification and renewal by the board of every pharmacy doing business in this state. On presentation of evidence satisfactory to the board, on application on a prescribed form, and on the payment of an original certification fee prescribed by the board, the board shall issue a license to a pharmacy as a certified pharmacy. However, the license may be granted only to pharmacies operated by registered pharmacists qualified under this chapter. The license must be displayed in a conspicuous place in the pharmacy for which it is issued. A person may not operate a pharmacy, use the word "pharmacy" to identify the business, or use the word "pharmacy" in advertising unless a license has been issued and is in effect.

History: En. Sec. 8, Ch. 175, L. 1939; amd. Sec. 1, Ch. 76, L. 1959; amd. Sec. 1, Ch. 9, L. 1967; amd. Sec. 1, Ch. 80, L. 1969; amd. Sec. 6, Ch. 241, L. 1971; amd. Sec. 1, Ch. 308, L. 1974; amd. Sec. 154, Ch. 350, L. 1974; amd. Sec. 8, Ch. 533, L. 1977; R.C.M. 1947, 66-1508; amd. Sec. 17, Ch. 345, L. 1981; amd. Sec. 5, Ch. 362, L. 1981; amd. Sec. 9, Ch. 379, L. 1981; amd. Sec. 5, Ch. 247, L. 1983; amd. Sec. 39, Ch. 429, L. 1995; amd. Sec. 11, Ch. 492, L. 1997; amd. Sec. 7, Ch. 388, L. 2001; amd. Sec. 39, Ch. 467, L. 2005.

37-7-322. Use of words pharmacy, apothecary, drug store, or chemist shop for advertising. It is unlawful for a person to carry on, conduct, or transact a retail business under a name which contains as a part of the business the words "pharmacy", "apothecary", "drug store", or "chemist shop" or any abbreviation, translation, extension, or variation of those terms or in any manner by advertisement circular or poster, sign, or otherwise to describe or refer to the place of business conducted by that person by the term, abbreviation, translation, extension, or variation unless the business conducted is a pharmacy within the meaning of this chapter and licensed and in the charge of a licensed pharmacist.

History: En. Sec. 11, Ch. 175, L. 1939; amd. Sec. 9, Ch. 101, L. 1977; R.C.M. 1947, 66-1522; amd. Sec. 8, Ch. 388, L. 2001.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

37-7-323. Penalty -- enforcement. (1) A person, firm, partnership, or corporation violating any of the provisions of parts 1 through 3 of this chapter is guilty of a misdemeanor and upon conviction for each violation shall automatically lose any license issued by the board.

(2) In addition to the penalty provided in subsection (1), the board may withdraw its approval of a utilization plan previously approved for a supervising pharmacist who:

(a) violates any provision of 37-7-307 through 37-7-309 or rules adopted under those sections;

(b) obtained the approval of the utilization plan through fraud; or

(c) acts in a manner contrary to the terms of the utilization plan.

(3) The board may seek an injunction to enforce the provisions of subsection (2).

History: En. Sec. 5, Ch. 104, L. 1931; re-en. Sec. 3202.11, R.C.M. 1935; amd. Sec. 15, Ch. 175, L. 1939; R.C.M. 1947, 66-1526; amd. Sec. 6, Ch. 219, L. 1991; amd. Sec. 9, Ch. 388, L. 2001.

Cross-References

Disciplinary authority of boards -- injunctions, 37-1-136.

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

Misdemeanor penalty when none specified, 46-18-212.

Fines in felony and misdemeanor cases, 46-18-231.

37-7-324. Deposit of fees and fines. Fines paid under this chapter, except those paid to a justice's court, and fees collected by the department for registration and licenses issued under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 6, Ch. 104, L. 1931; re-en. Sec. 3202.12, R.C.M. 1935; amd. Sec. 16, Ch. 175, L. 1939; amd. Sec. 134, Ch. 147, L. 1963; amd. Sec. 159, Ch. 350, L. 1974; R.C.M. 1947, 66-1527; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 23, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Part 4
Prescriptions Regulated -- Review -- Counseling

Part Cross-References

Dispensing of drugs, Title 37, ch. 2, part 1.

Dangerous drugs, Title 45, ch. 9.

Controlled substances, Title 50, ch. 32.

37-7-401. Restrictions on prescriptions. (1) An authorized prescriber may not sell, give to, or prescribe for any person any opium, morphine, alkaloid-cocaine, alpha or beta eucaine, codeine, heroin, or any derivative, mixture, or preparation of any of them, except to a patient believed in good faith to require opium, morphine, alkaloid-cocaine, alpha or beta eucaine, codeine, heroin, or any derivative, mixture, or preparation of the enumerated substances for medical use and in quantities proportioned to the needs of the patient.

(2) A prescription must be written so that the prescription can be compounded by any registered pharmacist. The coding of any prescription is a violation of this section.

(3) A prescription marked "non repetatur", "non rep", or "N.R." cannot be refilled. A prescription marked to be refilled may be filled by any registered pharmacist the number of times marked on the prescription. A prescription not bearing any refill instructions may not be refilled without first obtaining permission from the prescriber. A prescription may not be refilled for more than 1 year from the date the prescription was originally written. A Schedule II prescription may not be refilled.

History: En. Sec. 2, Ch. 11, L. 1911; re-en. Sec. 3187, R.C.M. 1921; re-en. Sec. 3187, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1951; R.C.M. 1947, 66-1514; amd. Sec. 10, Ch. 379, L. 1981; amd. Sec. 17, Ch. 97, L. 1989; amd. Sec. 2, Ch. 444, L. 1989; amd. Sec. 10, Ch. 388, L. 2001; amd. Sec. 27, Ch. 126, L. 2005.

37-7-402. Penalty for violation of provisions on sale or prescription of opiates, coding, refilling. Any person found guilty of the violation of 37-7-401 shall be punished for each

separate offense (and each and every individual case shall constitute a separate offense) by a fine of not less than $50 or more than $500 or by imprisonment in the county jail for a period of not less than 60 days or more than 100 days or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 11, L. 1911; re-en. Sec. 3188, R.C.M. 1921; re-en. Sec. 3188, R.C.M. 1935; R.C.M. 1947, 66-1515.

Cross-References

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

Fines in felony and misdemeanor cases, 46-18-231.

37-7-403. Repealed. Sec. 8, Ch. 247, L. 1983.

History: En. Sec. 1, Ch. 11, L. 1935; re-en. Sec. 3185.1, R.C.M. 1935; amd. Sec. 155, Ch. 350, L. 1974; R.C.M. 1947, 66-1511.

37-7-404. Repealed. Sec. 8, Ch. 247, L. 1983.

History: En. Sec. 2, Ch. 11, L. 1935; re-en. Sec. 3185.2, R.C.M. 1935; amd. Sec. 156, Ch. 350, L. 1974; R.C.M. 1947, 66-1512.

37-7-405. Repealed. Sec. 8, Ch. 247, L. 1983.

History: En. Sec. 3, Ch. 11, L. 1935; re-en. Sec. 3185.3. R.C.M. 1935; R.C.M. 1947, 66-1513.

37-7-406. Standards for prospective drug utilization review and patient counseling. (1) The board may by rule set standards for the provision of prospective drug utilization review information from a pharmacist to a patient before a prescription is dispensed to the patient or the patient's representative. The review may include, when applicable, an appropriate level of screening for potential drug therapy problems due to therapeutic duplication, drug disease contraindications, drug interactions, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse or misuse.

(2) Under the standards provided for in this section, the pharmacist should offer to discuss those matters that, in the pharmacist's professional judgment, the pharmacist considers significant to the patient's safe and proper use of the prescribed drug. The patient counseling should encompass the topics set forth in 42 U.S.C. 1396r-8 of the Social Security Act and administrative rules established by the board.

(3) Communications between a pharmacist and a patient pursuant to the standards provided for in this section constitute health care information for the purposes of Title 50, chapter 16, part 5.

(4) Standards established by the board under this section apply to all patients seen by a pharmacist or to categories of patients as the board may designate. However, standards provided for in this section may not apply to inpatients of a health care facility in which a nurse or other licensed health care professional is authorized to administer the prescribed drug.

History: En. Sec. 1, Ch. 664, L. 1991; amd. Sec. 11, Ch. 388, L. 2001.

37-7-407. Penalty. In addition to all other penalties provided by law, a person violating 37-7-406 shall be fined not more than $250 for each violation.

History: En. Sec. 8, Ch. 664, L. 1991.

Part 5
Drug Product Selection

37-7-501. Short title. This part may be cited as the "Montana Drug Product Selection Act".

History: En. 66-1528 by Sec. 1, Ch. 403, L. 1977; R.C.M. 1947, 66-1528.

37-7-502. Definitions. As used in this part, the following definitions apply:

(1) "Bioavailability" means the extent and rate of absorption from a dosage form as reflected by the time-concentration curve of the administered drug in the systemic circulation.

(2) "Bioequivalent" means a chemical equivalent which, when administered to the same individual in the same dosage regimen, will result in comparable bioavailability.

(3) "Brand name" means the proprietary or the registered trademark name given to a drug product by its manufacturer, labeler, or distributor and placed upon the drug, its container, label, or wrapping at the time of packaging.

(4) "Chemical equivalent" means drug products that contain the same amounts of the same therapeutically active ingredients in the same dosage forms and that meet present compendium standards.

(5) "Drug product" means a dosage form containing one or more active therapeutic ingredients along with other substances included during the manufacturing process.

(6) "Generic name" means the chemical or established name of a drug product or drug ingredient published in the latest edition of an official compendium recognized by the board.

(7) "Person" has the same meaning as provided in 37-7-101.

(8) "Prescriber" means a medical practitioner, as defined in 37-2-101, licensed under the professional laws of the state to administer and prescribe medicine and drugs.

(9) "Present compendium standard" means the official standard for drug excipients and drug products listed in the latest revision of an official compendium recognized by the board.

(10) "Product selection" means to dispense without the prescriber's express authorization a different drug product in place of the drug product prescribed.

(11) "Therapeutically equivalent" means those chemical equivalents which, when administered in the same dosage regimen, will provide essentially the same therapeutic effect as measured by the control of a symptom or a disease and/or toxicity.

History: En. 66-1529 by Sec. 2, Ch. 403, L. 1977; R.C.M. 1947, 66-1529; amd. Sec. 11, Ch. 379, L. 1981; amd. Sec. 12, Ch. 388, L. 2001.

37-7-503. Rulemaking. The board of pharmacy may adopt, amend, or repeal rules necessary for the implementation, continuation, and enforcement of this part in accordance with the Montana Administrative Procedure Act.

History: En. 66-1535 by Sec. 8, Ch. 403, L. 1977; R.C.M. 1947, 66-1535; amd. Sec. 1, Ch. 247, L. 1983.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

37-7-504. General prohibition of drug substitution. No person may substitute a drug different from the one ordered or deviate in any manner from the requirements of an order or prescription, except as provided in this part.

History: En. 66-1523(2) by Sec. 10, Ch. 403, L. 1977; R.C.M. 1947, 66-1523.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

37-7-505. Product selection permitted -- limitation. (1) Except as limited by subsection (2) and unless instructed otherwise by the purchaser, the pharmacist who receives a prescription for a specific drug product by brand or proprietary name may select a less expensive drug product with the same generic name, strength, quantity, dose, and dosage form as the prescribed drug that is, in the pharmacist's professional opinion, therapeutically equivalent, bioequivalent, and bioavailable.

(2) If, in the professional opinion of the prescriber, it is medically necessary that an equivalent drug product not be selected, the prescriber may so indicate by certifying that the specific brand-name drug product is medically necessary for that particular patient. In the case of a prescription transmitted orally, the prescriber must expressly indicate to the pharmacist that the brand-name drug product prescribed is medically necessary.

History: En. 66-1530 by Sec. 3, Ch. 403, L. 1977; R.C.M. 1947, 66-1530; amd. Sec. 13, Ch. 388, L. 2001.

37-7-506. Notice to purchaser. (1) A pharmacist who selects a drug product as provided in 37-7-505 shall notify the person presenting the prescription that he may refuse the product selection as provided in 37-7-505.

(2) Each pharmacy shall display in a prominent place that is in clear and unobstructed public view, at or near the place where prescriptions are dispensed, a sign stating: "This pharmacy may be able to select a less expensive drug product which is equivalent to the one prescribed by your physician unless you or your physician request otherwise." The printing on the sign shall be in block letters not less than 1 inch in height.

History: En. 66-1531 by Sec. 4, Ch. 403, L. 1977; R.C.M. 1947, 66-1531.

37-7-507. Savings passed on. (1) A pharmacist selecting a less expensive drug product must pass on to the purchaser the full amount of the savings realized by the product selection. In no event may the pharmacist charge a different professional fee for dispensing a different drug product than the drug product originally prescribed.

(2) If the prescriber prescribes a drug product by its generic name, the pharmacist must, consistent with reasonable judgment, dispense the lowest retail priced, therapeutically equivalent brand which is in stock.

History: En. 66-1532 by Sec. 5, Ch. 403, L. 1977; R.C.M. 1947, 66-1532.

37-7-508. Product selection not practice of medicine. The selection of a drug product by a registered pharmacist under the provisions of this part does not constitute the practice of medicine.

History: En. 66-1533 by Sec. 6, Ch. 403, L. 1977; R.C.M. 1947, 66-1533.

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

37-7-509. Limitations on liability. (1) A pharmacist making a product selection under the provisions of this part assumes no greater responsibility for selecting the dispensed drug product than he would incur in filling a prescription for a drug product prescribed by a generic name.

(2) When a pharmacist selects a drug product, the prescriber may not be held liable in an action for loss, damage, injury, or death to a person caused by the use of the selected drug product, except that if the original drug product was incorrectly prescribed, the prescriber is not relieved of liability.

History: En. 66-1534 by Sec. 7, Ch. 403, L. 1977; R.C.M. 1947, 66-1534.

Cross-References

Availability of remedies -- liability, Title 27, ch. 1.

Montana Medical Legal Panel Act, Title 27, ch. 6.

37-7-510. Penalty. (1) In addition to all other penalties provided by law, a person who violates the provisions of 37-7-505, 37-7-506, or 37-7-507 or any rule promulgated as provided in 37-7-503 shall be fined no more than $250 for each violation.

(2) The penalty imposed under this part may be remitted or mitigated upon such terms and conditions as the board of pharmacy considers proper and consistent with the public health and safety.

(3) A civil penalty imposed under this part becomes due and payable when the person incurring the penalty receives a notice in writing from the board of pharmacy. The notice shall be sent by registered or certified mail and must include:

(a) reference to the particular sections of the statute or rule;

(b) a short and plain statement of the matters asserted as charged;

(c) a statement of the amount of the penalty or penalties imposed; and

(d) a statement of the person's right to request a hearing.

(4) The person to whom the notice is addressed has 20 days from the date of the notice in which to make written application for a hearing before the board of pharmacy.

History: En. 66-1536 by Sec. 11, Ch. 403, L. 1977; R.C.M. 1947, 66-1536; amd. Sec. 1, Ch. 247, L. 1983.

Cross-References

Contested case as including licensing, 2-4-102, 2-4-631.

Contested case procedure, Title 2, ch. 4, part 6.

Criminal responsibility and accountability of corporations, 45-2-311, 45-2-312.

Part 6
Wholesale Drug Distributors -- Licensing

37-7-601. Scope and purpose. This part applies to a person or entity engaged in the wholesale distribution of prescription drugs in this state. The purpose of this part is to implement the federal Prescription Drug Marketing Act of 1987 by providing minimum standards, terms, and conditions for licensing by the department of persons or entities engaged in wholesale distributions of prescription drugs.

History: En. Sec. 2, Ch. 134, L. 1991.

37-7-602. Definitions. As used in this part, the following definitions apply:

(1) "Blood" means whole blood collected from a single donor and processed either for transfusion or for further manufacturing.

(2) "Blood component" means that part of blood separated by physical or mechanical means.

(3) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

(4) "Manufacturer" means a person or entity engaged in the manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a prescription drug or device.

(5) "Prescription drug" has the same meaning as provided in 37-7-101.

(6) (a) "Wholesale drug distribution" means distribution of prescription drugs to persons other than a consumer or patient.

(b) The term does not include:

(i) intracompany sales;

(ii) the purchase or other acquisition, by a hospital or other health care entity that is a member of a group purchasing organization, of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of group purchasing organizations;

(iii) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), as amended, to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(iv) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control. For purposes of this subsection (6)(b)(iv), "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, contract, or otherwise.

(v) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons. For the purposes of this subsection (6)(b)(v), "emergency medical reasons" includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage.

(vi) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;

(vii) the distribution of drug samples by manufacturers' representatives or distributors' representatives; or

(viii) the sale, purchase, or trade of blood and blood components intended for transfusion.

(7) "Wholesale drug distributor" means a person or entity engaged in wholesale distribution of prescription drugs, including but not limited to manufacturers, repackers, own-label distributors, private-label distributors, jobbers, brokers, warehouses (including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses), independent wholesale drug traders, and retail pharmacies that conduct wholesale distributions.

History: En. Sec. 3, Ch. 134, L. 1991; amd. Sec. 14, Ch. 388, L. 2001; amd. Sec. 73, Ch. 114, L. 2003.

37-7-603. Prohibited purchase or receipt of drugs -- restrictions on wholesale drug distributors -- penalty. (1) Except as otherwise provided, it is unlawful for a person to knowingly purchase or receive a prescription drug from a source other than a person or entity licensed under this part.

(2) Licensed wholesale drug distributors other than pharmacies may not dispense or distribute prescription drugs directly to patients.

(3) A person who violates the provisions of this section is guilty of a misdemeanor.

History: En. Sec. 4, Ch. 134, L. 1991.

37-7-604. Wholesale drug distributor licensing requirements -- fee -- federal compliance. (1) A person or distribution outlet may not act as a wholesale drug distributor without first obtaining a license from the board and paying the license fee.

(2) A license may not be issued or renewed for a wholesale drug distributor to operate in this state unless the applicant:

(a) agrees to abide by federal and state law and to comply with the rules adopted by the board; and

(b) pays the license fee set by the board.

(3) The board in its discretion may require that a separate license be obtained for:

(a) each facility directly or indirectly owned or operated by the same business entity within the state; or

(b) a parent entity with divisions, subsidiaries, or affiliates within the state if operations are conducted at more than one location and joint ownership and control exists among all entities.

(4) In order to obtain and maintain a wholesale drug distributorship in this state, an applicant shall provide written documentation to the board attesting that the applicant has maintained and will continue to maintain:

(a) adequate storage conditions and facilities;

(b) minimum liability and other insurance that may be required by applicable federal or state law;

(c) a functioning security system that includes:

(i) an after hours central alarm or comparable entry detection system;

(ii) restricted access to the premises;

(iii) comprehensive employee applicant screening; and

(iv) safeguards against employee theft;

(d) a system of records setting forth all activities of wholesale drug distribution as defined in 37-7-602 for at least a period of the 2 previous years. The system of records must be accessible, as defined by board regulations, for inspections authorized by the board.

(e) principals, including officers, directors, primary shareholders, and management executives, who shall at all times demonstrate and maintain their responsibility for conducting the business in conformity with sound financial practices as well as state and federal law;

(f) complete, updated information, to be provided to the board as a condition for obtaining and retaining a license, pertaining to each wholesale drug distributor to be licensed, including but not limited to:

(i) all pertinent corporate license information, if applicable; and

(ii) other information regarding ownership, principals, key personnel, and facilities;

(g) a written protocol of procedures and policies that assures preparation by the wholesale drug distributor for the handling of security or operational problems, including but not limited to those caused by:

(i) natural disaster or government emergency;

(ii) inventory inaccuracies or product shipping and receiving;

(iii) insufficient inspections for all incoming and outgoing product shipments;

(iv) lack of control of outdated or other unauthorized products;

(v) inappropriate disposition of returned goods; and

(vi) failure to promptly comply with product recalls; and

(h) operations in compliance with all federal requirements applicable to wholesale drug distribution.

(5) An agent or employee of a licensed wholesale drug distributor need not be licensed as a wholesale drug distributor.

(6) For purposes of this section, all rules and regulations promulgated by the board must conform to the wholesale drug distributor licensing guidelines formally adopted by the United States food and drug administration. If a conflict arises between a food and drug administration guideline and a rule or regulation of the board, the former controls.

History: En. Sec. 5, Ch. 134, L. 1991.

37-7-605. Out-of-state wholesale drug distributor licensing requirements. (1) An out-of-state wholesale drug distributor may not conduct business in this state without first obtaining a license from the board and paying the license fee established by the board.

(2) Application for a license under this section must be made on an approved form.

(3) The issuance of a license may not affect tax liability imposed by the department of revenue on any out-of-state wholesale drug distributor.

(4) A person acting as principal or agent for an out-of-state wholesale drug distributor may not sell or distribute drugs in this state unless the distributor has obtained a license.

History: En. Sec. 6, Ch. 134, L. 1991; amd. Sec. 40, Ch. 467, L. 2005.

37-7-606. Licenses. The license for wholesale drug distributors is effective during the period specified by department rule.

History: En. Sec. 7, Ch. 134, L. 1991; amd. Sec. 40, Ch. 429, L. 1995; amd. Sec. 12, Ch. 492, L. 1997; amd. Sec. 41, Ch. 467, L. 2005.

37-7-607. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 8, Ch. 134, L. 1991.

37-7-608. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 9, Ch. 134, L. 1991.

37-7-609. Board access to wholesale drug records. Wholesale drug distributors may keep records at a central location apart from the principal office of the wholesale drug distributor or the location where the drugs are stored and from where they are shipped, provided that the records must be available for inspection within 2 working days of a request by the board. The records may be kept in any form permissible under federal law applicable to prescription drug recordkeeping.

History: En. Sec. 10, Ch. 134, L. 1991.

37-7-610. Rulemaking authority. The board shall adopt rules and regulations necessary to carry out the purpose and enforce the provisions of this part. If the rules and regulations conflict with the wholesale drug distribution guidelines promulgated by the United States food and drug administration, the latter control.

History: En. Sec. 11, Ch. 134, L. 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 7
Out-of-State Mail Service Pharmacies

37-7-701. Legislative declaration. The legislature recognizes that with the proliferation of alternate methods of health care delivery, there has arisen among third-party payors and insurance companies the desire to control the cost and use of pharmacy services through a variety of mechanisms, including the use of mail service pharmacies located outside this state. As a result, the legislature finds and declares that to continue to protect the consumer-patients of this state, all out-of-state mail service pharmacies that provide services to this state's residents must be registered with the board, shall disclose specific information about their services, shall meet the same standards for utilization of technicians as an in-state pharmacy, and shall provide pharmacy services at a high level of competence.

History: En. Sec. 2, Ch. 664, L. 1991; amd. Sec. 2, Ch. 300, L. 1993; amd. Sec. 2, Ch. 274, L. 1995.

37-7-702. Out-of-state mail service pharmacy defined. "Out-of-state mail service pharmacy" means a pharmacy located outside this state that:

(1) ships, mails, or delivers by any lawful means a dispensed legend drug to a resident in this state pursuant to a legally issued prescription;

(2) provides to a resident of this state information on drugs or devices that may include but is not limited to advice relating to therapeutic values, potential hazards, and uses; or

(3) counsels pharmacy patients residing in this state concerning adverse and therapeutic effects of drugs.

History: En. Sec. 3, Ch. 664, L. 1991.

37-7-703. Registration requirements. Each out-of-state mail service pharmacy must be registered with the board of pharmacy. In order to be registered with the board to do business in this state and for the renewal of its registration, an out-of-state mail service pharmacy:

(1) (a) shall submit a certificate from the appropriate licensing authority with which it is currently licensed and in good standing in the state in which its dispensing facilities are located; and

(b) shall comply with all applicable laws, regulations, and standards of that state and the United States and, if requested by the board, provide evidence that it has complied;

(2) shall register with the board and provide information on ownership and location, including the names and titles of the corporate officers, of the out-of-state mail service pharmacy and the identity of a pharmacist licensed in the state in which the pharmacy is located who is in charge of dispensing prescriptions for shipment to Montana from the out-of-state mail service pharmacy;

(3) shall submit a utilization plan for the employment of pharmacy technicians if allowed by the state where the mail service pharmacy is located. If the state in which the pharmacy is located does not establish a ratio of technicians to pharmacists for determining the number of pharmacy technicians or otherwise define the role of the pharmacist in compounding or dispensing drugs at the pharmacy, then the out-of-state mail service pharmacy may not allow a pharmacist to supervise more than one supportive person at any one time in the compounding or dispensing of prescription drugs, unless approved by the board as provided in 37-7-307 through 37-7-309.

(4) shall submit to the board proof of the pharmacist's good standing with the licensing authority in the state where the pharmacist is employed and the pharmacist's written commitment to

comply with the utilization plan, if any, for each pharmacist identified under subsection (2) and shall provide to the board the same toll-free telephone service referenced in 37-7-706 in order to comply with all information requests by the board; and

(5) shall pay an initial registration fee and a periodic renewal fee in an amount to be determined by the board and at a time established by the department by rule.

History: En. Sec. 4, Ch. 664, L. 1991; amd. Sec. 3, Ch. 300, L. 1993; amd. Sec. 3, Ch. 274, L. 1995; amd. Sec. 13, Ch. 492, L. 1997.

37-7-704. Inspections. If the licensing or regulatory agency of the state in which an out-of-state mail service pharmacy is domiciled fails or refuses to inspect the out-of-state mail service pharmacy after receiving a request for an inspection from the board of this state, the board may cancel the out-of-state pharmacy's right to do business in this state unless the out-of-state pharmacy agrees to an onsite inspection by the board of this state.

History: En. Sec. 5, Ch. 664, L. 1991.

37-7-705. Product selection of prescribed drugs -- notification. (1) An out-of-state mail service pharmacy may not substitute a prescription drug unless the substitution is made in compliance with the laws of this state and the rules and regulations of the board.

(2) An out-of-state mail service pharmacy may not dispense a substitute drug product to a resident of this state without notifying the patient of the substitution either by telephone or in writing.

History: En. Sec. 6, Ch. 664, L. 1991.

37-7-706. Patient communication -- telephone service. Every out-of-state mail service pharmacy shall provide a toll-free telephone service, available at least 6 days a week and for 40 hours a week, to facilitate communication as may be required under this part, between patients in this state and a pharmacist who has access to the patients' records at the out-of-state mail service pharmacy. The toll-free telephone number must be affixed to all drug product containers dispensed to patients in this state.

History: En. Sec. 7, Ch. 664, L. 1991.

37-7-707 through 37-7-709 reserved.

37-7-710. Repealed. Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 4, Ch. 300, L. 1993.

37-7-711. Penalty. In addition to all other penalties provided by law, a person violating 37-7-703 through 37-7-706 shall be fined not more than $250 for each violation.

History: En. Sec. 8, Ch. 664, L. 1991.

37-7-712. Rulemaking authority. The board of pharmacy may adopt rules to implement this part.

History: En. Sec. 4, Ch. 274, L. 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Parts 8 through 10 reserved

Part 11
Peer Review

Part Cross-References

Licensing investigation and review -- record access, 37-1-135.

Health care practitioners -- nonliability for peer review, Title 37, ch. 2, part 2.

37-7-1101. Nonliability for peer review. No member, employee, or volunteer intervenor of the Montana pharmaceutical association in its peer review program is liable in damages to any person for any action taken or recommendation made within the scope of the program if the member, employee, or volunteer acts in good faith in accordance with the rules of the association.

History: En. Sec. 1, Ch. 235, L. 1987.

Parts 12 and 13 reserved

Part 14
Donated Drug Program

37-7-1401. Department of public health and human services and board of pharmacy to create program for donation of unused prescription drugs -- rulemaking required. (1) The board of pharmacy shall, in consultation and cooperation with the department of public health and human services, create a program for the donation of prescription drugs collected from long-term care facilities to qualified patients.

(2) For the purposes of the program created pursuant to subsection (1), prescription drugs, except those drugs defined as a dangerous drug in 50-32-101 or a drug designated as a precursor to a controlled substance in 50-32-401, unneeded by a resident or former resident of a long-term care facility may be donated by the long-term care facility to a provisional community pharmacy that provides or may provide prescription drugs to individuals who are qualified patients for transfer free of charge or at a reduced charge to those individuals.

(3) This section does not amend or otherwise change the law applicable to the prescribing of prescription drugs, the sale of those drugs, or the licensing of long-term care facilities or pharmacies.

(4) The board of pharmacy shall adopt rules to implement this part. The rules must address the subjects of collection and receipt of donated prescription drugs from residents of long-term care facilities, keeping of those drugs within the long-term care facility, transfer of the drugs to provisional community pharmacies, which pharmacies may be considered provisional community pharmacies that may sell or give the drugs to others, and the price for which the drugs may be sold. In adopting the rules, the board of pharmacy shall consider the ability of persons to pay for the drugs and the existence and operation of similar programs in other states.

(5) As used in this part, the following definitions apply:

(a) "Long-term care facility" has the meaning provided in 50-5-101.

(b) "Provisional community pharmacy" means the practice of pharmacy at a site that has been approved by the board, including but not limited to federally qualified health centers as defined in 42 CFR 405.2401, where prescription drugs are dispensed to appropriately screened, qualified patients.

(c) "Qualified patients" mean persons who are uninsured, indigent, or have insufficient funds to obtain needed prescription drugs.

History: En. Sec. 1, Ch. 362, L. 2001.

37-7-1402. Long-term care facilities to delete identifying information from donated prescription drugs. A long-term care facility donating a prescription drug pursuant to the program created under this part shall delete from the container in which that drug is held any information by which the long-term care facility resident or former resident for whom the drugs were prescribed may be identified.

History: En. Sec. 2, Ch. 362, L. 2001.

37-7-1403 through 37-7-1407 reserved.

37-7-1408. Immunity for long-term care patients and facilities donating prescription drugs. A resident or former resident of a long-term care facility and the long-term care facility donating a prescription drug as part of the program created pursuant to this part are not liable for simple negligence in the donation of a drug if the requirements of this part and the rules implementing this part have been complied with.

History: En. Sec. 3, Ch. 362, L. 2001.

TITLE 45
CRIMES

CHAPTER 9
DANGEROUS DRUGS

Part 1 -- Offenses Involving Dangerous Drugs

45-9-101. Criminal distribution of dangerous drugs.
45-9-102. Criminal possession of dangerous drugs.

45-9-103. Criminal possession with intent to distribute.
45-9-104. Fraudulently obtaining dangerous drugs.
45-9-105. Altering labels on dangerous drugs.
45-9-106. Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs.
45-9-107. Criminal possession of precursors to dangerous drugs.
45-9-108. Exemptions.
45-9-109. Criminal distribution of dangerous drugs on or near school property -- penalty -- affirmative defense.
45-9-110. Criminal production or manufacture of dangerous drugs.
45-9-111. Imitation dangerous drugs -- definitions.
45-9-112. Criminal distribution of imitation dangerous drug -- penalty.
45-9-113. Criminal possession of imitation dangerous drug with the purpose to distribute -- penalty.
45-9-114. Criminal advertisement of imitation dangerous drug -- penalty.
45-9-115. Criminal manufacture of imitation dangerous drug -- penalty.
45-9-116. Imitation dangerous drugs -- exemptions -- rules.
45-9-117 through 45-9-120 reserved.
45-9-121. Criminal possession of toxic substances -- penalty.
45-9-122 through 45-9-124 reserved.
45-9-125. Continuing criminal enterprise -- penalty.
45-9-126 reserved.
45-9-127. Carrying dangerous drugs on train -- penalty.
45-9-128 and 45-9-129 reserved.
45-9-130. Mandatory fine for possession and storage of dangerous drugs -- disposition of proceeds.
45-9-131. Definitions.
45-9-132. Operation of unlawful clandestine laboratory -- penalties.

Part 2 -- Procedural Provisions

45-9-201. Repealed.
45-9-202. Alternative sentencing authority.
45-9-203. Surrender of license.
45-9-204. Immunity from liability.
45-9-205. Exemption from mandatory minimum sentences.
45-9-206. Use or possession of property subject to criminal forfeiture -- property subject to criminal forfeiture.
45-9-207 reserved.
45-9-208. Mandatory dangerous drug information course.

Chapter Cross-References
Controlled substances, Title 50, ch. 32.

Part 1
Offenses Involving Dangerous Drugs

Part Cross-References
Controlled substances, Title 50, ch. 32.

45-9-101. Criminal distribution of dangerous drugs. (1) Except as provided in Title 50, chapter 46, a person commits the offense of criminal distribution of dangerous drugs if the person sells, barters, exchanges, gives away, or offers to sell, barter, exchange, or give away any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal distribution of a narcotic drug, as defined in 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction for criminal distribution of such a drug shall be imprisoned in the state prison for a term of not less than 10 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222. Upon a third or subsequent conviction for criminal distribution of such a drug, the person shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(4) A person convicted of criminal distribution of dangerous drugs not otherwise provided for in subsection (2), (3), or (5) shall be imprisoned in the state prison for a term of not less than 1 year or more than life or be fined an amount of not more than $50,000, or both.

(5) A person who was an adult at the time of distribution and who is convicted of criminal distribution of dangerous drugs to a minor shall be sentenced as follows:

(a) If convicted pursuant to subsection (2), the person shall be imprisoned in the state prison for not less than 4 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(b) If convicted of the distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of such a distribution, the person shall be imprisoned in the state prison for not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(c) If convicted of the distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of two or more such distributions, the person shall be imprisoned in the state prison for not less than 40 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(d) If convicted pursuant to subsection (4), the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(6) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section.

History: En. Sec. 4, Ch. 314, L. 1969; amd. Sec. 1, Ch. 55, L. 1973; amd. Sec. 24, Ch. 412, L. 1973; amd. Sec. 1, Ch. 258, L. 1974; amd. Sec. 1, Ch. 359, L. 1977; amd. Sec. 1, Ch. 584, L. 1977; R.C.M. 1947, 54-132; amd. Sec. 1, Ch. 587, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 9, Ch. 583, L. 1981; amd. Sec. 1, Ch. 393, L. 1983; amd. Sec. 16, Ch. 3, L. 1985; amd. Sec. 1, Ch. 478, L. 1987; amd. Sec. 1, Ch. 575, L. 1989; amd. Sec. 3, Ch. 448, L. 1993; amd. Sec. 11, Ch. 432, L. 1999; amd. Sec. 87, Ch. 114, L. 2003; amd. Sec. 11, I.M. No. 148, approved Nov. 2, 2004.

Cross-References

Criminal jurisdiction of Justices' Courts, 3-10-303.
Offense defined, 45-2-101.
Limitation on deferral or suspension of sentence, 46-18-201.
Controlled substances, Title 50, ch. 32.
Dangerous drug defined, 50-32-101.
Marijuana defined, 50-32-101.
Opiate defined, 50-32-101.

45-9-102. Criminal possession of dangerous drugs. (1) Except as provided in Title 50, chapter 46, a person commits the offense of criminal possession of dangerous drugs if the person possesses any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than $100 or more than $500 and by imprisonment in the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended or deferred sentence. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed $1,000 or by imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or by both.

(3) A person convicted of criminal possession of an anabolic steroid as listed in 50-32-226 is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than $100 or more than $500 or by imprisonment in the county jail for not more than 6 months, or both.

(4) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than $50,000, except as provided in 46-18-222.

(5) (a) A person convicted of a second or subsequent offense of criminal possession of methamphetamine shall be punished by:

(i) imprisonment for a term not to exceed 5 years or by a fine not to exceed $50,000, or both; or

(ii) commitment to the department of corrections for placement in an appropriate correctional facility or program for a term of not less than 3 years or more than 5 years. If the person successfully completes a residential methamphetamine treatment program operated or approved by the department of corrections during the first 3 years of a term, the remainder of the term must be suspended. The court may also impose a fine not to exceed $50,000.

(b) During the first 3 years of a term under subsection (5)(a)(ii), the department of corrections may place the person in a residential methamphetamine treatment program operated or approved by the department of corrections or in a correctional facility or program. The residential methamphetamine treatment program must consist of time spent in a residential methamphetamine treatment facility and time spent in a community-based prerelease center.

(c) The court shall, as conditions of probation pursuant to subsection (5)(a), order:

(i) the person to abide by the standard conditions of probation established by the department of corrections;

(ii) payment of the costs of imprisonment, probation, and any methamphetamine treatment by the person if the person is financially able to pay those costs;

(iii) that the person may not enter an establishment where alcoholic beverages are sold for consumption on the premises or where gambling takes place;

(iv) that the person may not consume alcoholic beverages;

(v) the person to enter and remain in an aftercare program as directed by the person's probation officer; and

(vi) the person to submit to random or routine drug and alcohol testing.

(6) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsections (2) through (5) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $50,000, or both.

(7) A person convicted of a first violation under this section is presumed to be entitled to a deferred imposition of sentence of imprisonment.

(8) Ultimate users and practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section.

History: En. Sec. 5, Ch. 314, L. 1969; amd. Sec. 1, Ch. 228, L. 1971; amd. Sec. 26, Ch. 412, L. 1973; amd. Sec. 1, Ch. 174, L. 1974; amd. Sec. 2, Ch. 359, L. 1977; amd. Sec. 2, Ch. 584, L. 1977; R.C.M. 1947, 54-133; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 2, Ch. 612, L. 1983; amd. Sec. 17, Ch. 3, L. 1985; amd. Sec. 1, Ch. 42, L. 1991; amd. Sec. 1, Ch. 100, L. 2001; amd. Sec. 88, Ch. 114, L. 2003; amd. Sec. 12, I.M. No. 148, approved Nov. 2, 2004; amd. Sec. 2, Ch. 277, L. 2005.

Cross-References

Knowingly defined, 45-2-101.
Offense defined, 45-2-101.
Possession defined, 45-2-101.
Alternative sentencing authority, 45-9-202.
Limitation on deferral or suspension of sentence, 46-18-201.
Dismissal after deferred imposition of sentence, 46-18-204.
Dangerous drug defined, 50-32-101.
Marijuana defined, 50-32-101.
Opiate defined, 50-32-101.

45-9-103. Criminal possession with intent to distribute. (1) Except as provided in Title 50, chapter 46, a person commits the offense of criminal possession with intent to distribute if the person possesses with intent to distribute any dangerous drug as defined in 50-32-101.

(2) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), with intent to distribute shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal possession with intent to distribute not otherwise provided for in subsection (2) shall be imprisoned in the state prison for a term of not more than 20 years or be fined an amount not to exceed $50,000, or both.

(4) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section.

History: En. 54-133.1 by Sec. 1, Ch. 545, L. 1975; amd. Sec. 3, Ch. 584, L. 1977; R.C.M. 1947, 54-133.1; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 18, Ch. 3, L. 1985; amd. Sec. 1, Ch. 162, L. 1987; amd. Sec. 12, Ch. 432, L. 1999; amd. Sec. 89, Ch. 114, L. 2003; amd. Sec. 13, I.M. No. 148, approved Nov. 2, 2004.

Cross-References

Knowingly defined, 45-2-101.
Offense defined, 45-2-101.
Possession defined, 45-2-101.
Limitation on deferral or suspension of sentence, 46-18-201.
Controlled substances, Title 50, ch. 32.
Dangerous drug defined, 50-32-101.
Marijuana defined, 50-32-101.
Opiate defined, 50-32-101.

45-9-104. Fraudulently obtaining dangerous drugs. A person commits the offense of fraudulently obtaining dangerous drugs if he obtains or attempts to obtain a dangerous drug, as defined in 50-32-101, by:

(1) fraud, deceit, misrepresentation, or subterfuge;

(2) falsely assuming the title of or representing himself to be a manufacturer, wholesaler, practitioner, pharmacist, owner of a pharmacy, or other person authorized to possess dangerous drugs;

(3) the use of a forged, altered, or fictitious prescription;

(4) the use of a false name or a false address on a prescription; or

(5) the concealment of a material fact.

History: En. Sec. 6, Ch. 314, L. 1969; amd. Sec. 3, Ch. 359, L. 1977; R.C.M. 1947, 54-134.

Cross-References

Obtain defined, 45-2-101.
Offense defined, 45-2-101.
Penalty for fraudulently obtaining dangerous drugs or altering labels of dangerous drugs, 45-9-106.
Controlled substances, Title 50, ch. 32.
Dangerous drug defined, 50-32-101.

45-9-105. Altering labels on dangerous drugs. A person commits the offense of altering labels on dangerous drugs if he affixes a false, forged, or altered label to or otherwise misrepresents a package or receptacle containing a dangerous drug, as defined in 50-32-101.

History: En. Sec. 7, Ch. 314, L. 1969; amd. Sec. 4, Ch. 359, L. 1977; R.C.M. 1947, 54-135.

Cross-References

Offense defined, 45-2-101.
Penalty for fraudulently obtaining dangerous drugs or altering labels of dangerous drugs, 45-9-106.
Controlled substances, Title 50, ch. 32.
Dangerous drug defined, 50-32-101.

45-9-106. Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs. (1) A person convicted of altering labels on dangerous drugs shall be imprisoned in the county jail for a term not to exceed 6 months.

(2) A person convicted of fraudulently obtaining dangerous drugs included in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V in 50-32-222, 50-32-224, 50-32-226, 50-32-229, or 50-32-232 shall:

(a) upon his first conviction be imprisoned in the state prison for a term of not less than 1 year or not more than 5 years or fined an amount not to exceed $50,000, or both;

(b) upon his second conviction be imprisoned in the state prison for a term of not less than 5 years or not more than 10 years or fined an amount not to exceed $50,000, or both.

History: En. Sec. 8, Ch. 314, L. 1969; R.C.M. 1947, 54-136; amd. Sec. 1, Ch. 389, L. 1981; amd. Sec. 1, Ch. 179, L. 1991.

Cross-References

Fraudulently obtaining dangerous drugs, 45-9-104.

Altering labels on dangerous drugs, 45-9-105.

45-9-107. Criminal possession of precursors to dangerous drugs. (1) A person commits the offense of criminal possession of precursors to dangerous drugs if:

(a) the person possesses any material, compound, mixture, or preparation that contains any combination of the following with intent to manufacture dangerous drugs:

(i) phenyl-2-propanone (phenylacetone);

(ii) piperidine in conjunction with cyclohexanone;

(iii) ephedrine;

(iv) lead acetate;

(v) methylamine;

(vi) methylformamide;

(vii) n-methylephedrine;

(viii) phenylpropanolamine;

(ix) pseudoephedrine;

(x) anhydrous ammonia;

(xi) hydriodic acid;

(xii) red phosphorus;

(xiii) iodine in conjunction with ephedrine, pseudoephedrine, or red phosphorus;

(xiv) lithium in conjunction with anhydrous ammonia; or

(b) the person knowingly possesses anhydrous ammonia for the purpose of manufacturing dangerous drugs.

(2) A person convicted of criminal possession of precursors to dangerous drugs shall be imprisoned in the state prison for a term not less than 2 years or more than 20 years or be fined an amount not to exceed $50,000, or both.

History: En. Sec. 1, Ch. 291, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 202, L. 1989; amd. Sec. 1, Ch. 24, L. 1999; amd. Sec. 2, Ch. 137, L. 2005.

Cross-References

Possession defined, 45-2-101.

Exemptions, 45-9-108.

Dangerous drug defined, 50-32-101.

45-9-108. Exemptions. (1) The provisions of 45-9-107 do not apply to:

(a) a drug manufacturer licensed by the state;

(b) a person authorized by rules adopted by the board of pharmacy to possess the combination of substances;

(c) a person employed by or enrolled as a student in a college or university within the state who possesses any combination of substances listed in 45-9-107 for the purposes of teaching or research that is authorized by the college or university.

(2) The board of pharmacy shall adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act to authorize the processing of any combination of the substances listed in 45-9-107 whenever it determines that there is a legitimate need and that the substances will be used for a lawful purpose.

(3) The provisions of 45-9-102, 45-9-103, and 45-9-110 do not apply to 80-18-102.

History: En. Secs. 2, 3, Ch. 291, L. 1979; amd. Sec. 171, Ch. 575, L. 1981; amd. Sec. 1, Ch. 247, L. 1983; amd. Sec. 8, Ch. 360, L. 2001.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Criminal possession of precursors to dangerous drugs, 45-9-107.

45-9-109. Criminal distribution of dangerous drugs on or near school property -- penalty -- affirmative defense. (1) A person commits the offense of criminal distribution of dangerous drugs on or near school property if the person violates 45-9-101 in, on, or within 1,000 feet of the real property comprising a public or private elementary or secondary school.

(2) Except as provided in 46-18-222, a person convicted of criminal distribution of dangerous drugs on or near school property:

(a) shall be imprisoned in the state prison for a term of not less than 3 years or more than life; and

(b) may be fined an amount of not more than $50,000.

(3) It is not a defense to prosecution under subsection (1) that the person did not know the distance involved.

(4) It is an affirmative defense to prosecution for a violation of this section that:

(a) the prohibited conduct took place entirely within a private residence; and

(b) no person 17 years of age or younger was present in the private residence at any time during the commission of the offense.

History: En. Sec. 1, Ch. 519, L. 1991; amd. Sec. 13, Ch. 432, L. 1999.

45-9-110. Criminal production or manufacture of dangerous drugs. (1) Except as provided in Title 50, chapter 46, a person commits the offense of criminal production or manufacture of dangerous drugs if the person knowingly or purposely produces, manufactures, prepares, cultivates, compounds, or processes a dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal production or manufacture of a narcotic drug, as defined in 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 5 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal production or manufacture of a dangerous drug included in Schedule I of 50-32-222 or Schedule II of 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction that has become final for criminal production or manufacture of a Schedule I or Schedule II drug shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222. Upon a third or subsequent conviction that has become final for criminal production or manufacture of a Schedule I or Schedule II drug, the person shall be imprisoned in the state prison for a term of not less than 40 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(4) A person convicted of criminal production or manufacture of marijuana, tetrahydrocannabinol, or a dangerous drug not referred to in subsections (2) and (3) shall be imprisoned in the state prison for a term not to exceed 10 years and may be fined not more than $50,000, except that if the dangerous drug is marijuana and the total weight is more than a pound or the number of plants is more than 30, the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than $50,000. "Weight" means the weight of the dry plant and includes the leaves and stem structure but does not include the root structure. A person convicted under this subsection who has a prior conviction that has become final for criminal production or manufacture of a drug under this subsection shall be imprisoned in the state prison for a term not to exceed twice that authorized for a first offense under this subsection and may be fined not more than $100,000.

(5) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section.

History: En. Sec. 1, Ch. 448, L. 1993; amd. Sec. 90, Ch. 114, L. 2003; amd. Sec. 14, I.M. No. 148, approved Nov. 2, 2004.

45-9-111. Imitation dangerous drugs -- definitions. As used in 45-9-111 through 45-9-116 and 45-9-202, the following definitions apply:

(1) "Dangerous drug" has the meaning given to that term in 50-32-101.

(2) "Imitation dangerous drug" means a substance that is not a dangerous drug but that is expressly or impliedly represented to be a dangerous drug or to simulate the effect of a dangerous drug and the appearance of which, including the color, shape, size, and markings, would lead a reasonable person to believe that the substance is a dangerous drug.

(3) "Person" includes any individual, business association, partnership, or corporation.

History: En. Sec. 1, Ch. 451, L. 1983; amd. Sec. 19, Ch. 3, L. 1985.

45-9-112. Criminal distribution of imitation dangerous drug -- penalty. (1) A person commits the offense of criminal distribution of an imitation dangerous drug if the person knowingly or purposely sells, barters, exchanges, gives away, or offers to sell, barter, exchange, or give away any imitation dangerous drug.

(2) A person convicted of criminal distribution of an imitation dangerous drug to a person 18 years of age or older shall be imprisoned in the state prison for a term of not more than 5 years and may be fined not more than $50,000.

(3) A person convicted of criminal distribution of an imitation dangerous drug to a person under the age of 18 shall be imprisoned in the state prison for a term of not more than 10 years and may be fined not more than $50,000.

History: En. Sec. 2, Ch. 451, L. 1983; amd. Sec. 14, Ch. 432, L. 1999.

45-9-113. Criminal possession of imitation dangerous drug with the purpose to distribute -- penalty. (1) A person commits the offense of criminal possession of an imitation dangerous drug with the purpose to distribute if the person possesses with the purpose to distribute any imitation dangerous drug.

(2) A person convicted of criminal possession of an imitation dangerous drug with the purpose to distribute shall be imprisoned in the state prison for a term of not more than 5 years and may be fined not more than $50,000.

(3) A person under 18 years of age convicted of a first violation under this section is presumed to be entitled to a deferred imposition of sentence.

History: En. Sec. 3, Ch. 451, L. 1983; amd. Sec. 15, Ch. 432, L. 1999.

45-9-114. Criminal advertisement of imitation dangerous drug -- penalty. (1) A person commits the offense of criminal advertisement of an imitation dangerous drug if he knowingly or purposely places in any newspaper, magazine, handbill, or other publication or posts or distributes any advertisement or solicitation to promote the manufacture, sale, exchange, or distribution of an imitation dangerous drug.

(2) A person convicted of criminal advertisement of an imitation dangerous drug under this section is punishable by a fine not to exceed $100,000 or by imprisonment in the state prison for a term of not more than 10 years or by both such fine and imprisonment.

History: En. Sec. 4, Ch. 451, L. 1983.

45-9-115. Criminal manufacture of imitation dangerous drug -- penalty. (1) A person commits the offense of criminal manufacture of an imitation dangerous drug if he knowingly or purposely manufactures, prepares, or cultivates any imitation dangerous drug.

(2) A person convicted of criminal manufacture of an imitation dangerous drug under this section is punishable by a fine not to exceed $100,000 or by imprisonment in the state prison for a term of not more than 10 years or by both such fine and imprisonment.

History: En. Sec. 5, Ch. 451, L. 1983.

45-9-116. Imitation dangerous drugs -- exemptions -- rules. (1) Sections 45-9-111 through 45-9-115 do not apply to:

(a) a person authorized by rules adopted by the board of pharmacy to possess with purpose to sell or sell imitation dangerous drugs;

(b) law enforcement personnel selling or possessing with purpose to sell imitation dangerous drugs while acting within the scope of their employment; and

(c) a person registered under the provisions of Title 50, chapter 32, part 3, who sells, or possesses with purpose to sell an imitation dangerous drug for use as a placebo, by that person or any other person so registered, in the course of professional practice or research.

(2) The board of pharmacy shall adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act to authorize the possession with purpose to sell or sale of imitation dangerous drugs whenever it determines that there is a legitimate need and that the drugs will be used for a lawful purpose.

History: En. Sec. 6, Ch. 451, L. 1983; amd. Sec. 1, Ch. 247, L. 1983; amd. Sec. 20, Ch. 3, L. 1985.

45-9-117 through 45-9-120 reserved.

45-9-121. Criminal possession of toxic substances -- penalty. (1) A person commits the offense of criminal possession of a toxic substance if he inhales or ingests or possesses with the purpose to inhale or ingest, for the purpose of altering his mental or physical state, any substance with toxic effects that is not manufactured for human consumption or inhalation, including but not limited to glue, fingernail polish, paint and paint thinners, petroleum products, aerosol propellants, and chemical solvents.

(2) The provisions of subsection (1) do not apply to a bona fide institution of higher education conducting research with human volunteers pursuant to guidelines adopted by the institution or any federal or state agency.

(3) A person convicted under this section shall be imprisoned in the county jail for a term not to exceed 6 months or be fined an amount not to exceed $500, or both.

(4) The youth court has jurisdiction of any violation of subsection (1) by a person under 18 years of age.

History: En. Sec. 1, Ch. 482, L. 1983.

45-9-122 through 45-9-124 reserved.

45-9-125. Continuing criminal enterprise -- penalty. (1) A person who engages in a continuing criminal enterprise is guilty of a crime and upon conviction is punishable by a term of imprisonment and a fine not exceeding two times those authorized for the underlying offense. For purposes of this subsection, a person is engaged in a continuing criminal enterprise if:

(a) the person violates any provision of this chapter that is a felony; and

(b) the violation is a part of a continuing series of two or more violations of this chapter on separate occasions:

(i) that are undertaken by the person in concert with five or more other persons with respect to whom the person occupies a position of organizer, supervisor, or any other position of management; and

(ii) from which the person obtained substantial income or resources.

(2) A person who violates the provisions of subsection (1) after a previous judgment of conviction under that subsection has become final is punishable by a term of imprisonment not exceeding three times that authorized for the underlying offense.

(3) A sentence for a conviction under this section runs consecutively with the conviction for the underlying offense. Mandatory minimum sentences must be multiplied as provided in this section and may not be waived or suspended. **History: En. Sec. 1, Ch. 113, L. 1991.**

45-9-126 reserved.

45-9-127. Carrying dangerous drugs on train -- penalty. (1) Except as provided in Title 50, chapter 46, a person commits the offense of carrying dangerous drugs on a train in this state if he is knowingly or purposely in criminal possession of a dangerous drug and boards any train.

(2) A person convicted of carrying dangerous drugs on a train in this state is subject to the penalties provided in 45-9-102.

History: En. Secs. 2, 3, Ch. 601, L. 1991; amd. Sec. 15, I.M. No. 148, approved Nov. 2, 2004.

45-9-128 and 45-9-129 reserved.

45-9-130. Mandatory fine for possession and storage of dangerous drugs -- disposition of proceeds. (1) In addition to the punishments and fines set forth in this part, the court shall fine each person found to have possessed or stored dangerous drugs 35% of the market value of the drugs as determined by the court.

(2) The fines collected pursuant to subsection (1) during each calendar year must be transmitted by the clerk of court to the department of revenue no later than 10 days following the end of the calendar year. The department shall deposit the fines in the state general fund.

History: En. Sec. 1, Ch. 446, L. 1995; amd. Sec. 23, Ch. 257, L. 2001.

45-9-131. Definitions. As used in 45-9-132 and this section, the following definitions apply:

(1) "Booby trap" means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of a person making contact with the device. "Booby trap" includes:

(a) guns, ammunition, or explosive devices that are attached to trip wires or other triggering mechanisms;

(b) sharpened stakes, nails, spikes, electrical devices, lines, or wires with hooks attached; and

(c) devices for the production of toxic fumes or gases.

(2) "Equipment" or "laboratory equipment" means all products, components, or materials of any kind when used, intended for use, or designed for use in the manufacture, preparation, production, compounding, conversion, or processing of a dangerous drug as defined in 50-32-101. Equipment or laboratory equipment includes but is not limited to:

(a) a reaction vessel;

(b) a separatory funnel or its equivalent;

(c) a glass condensor;

(d) an analytical balance or scale; or

(e) a heating mantle or other heat source.

(3) "Precursor to dangerous drugs" means, except as exempted by 45-9-108, any material, compound, mixture, or preparation that contains any combination of the items listed in 45-9-107(1)(a) or anhydrous ammonia knowingly possessed for the purpose of manufacturing dangerous drugs.

History: En. Sec. 1, Ch. 260, L. 2001; amd. Sec. 3, Ch. 137, L. 2005.

45-9-132. Operation of unlawful clandestine laboratory -- penalties. (1) A person commits the offense of operation of an unlawful clandestine laboratory if the person purposely or knowingly engages in:

(a) the procurement, possession, or use of chemicals, precursors to dangerous drugs, supplies, equipment, or a laboratory location for the criminal production or manufacture of dangerous drugs as prohibited by 45-9-110;

(b) the transportation of or arranging for the transportation of chemicals, precursors to dangerous drugs, supplies, or equipment for the criminal production or manufacture of dangerous drugs as prohibited by 45-9-110; or

(c) the setting up of equipment or supplies in preparation for the criminal production or manufacture of dangerous drugs as prohibited by 45-9-110.

(2) Except as provided in subsections (3) and (4), a person convicted of operation of an unlawful clandestine laboratory shall be fined an amount not to exceed $25,000, be imprisoned in a state prison for a term not to exceed 40 years, or both.

(3) A person convicted of operation of an unlawful clandestine laboratory shall be fined an amount not to exceed $50,000, be imprisoned in a state prison for a term not to exceed 50 years, or both, if 46-1-401 is complied with and the operation of an unlawful clandestine laboratory or any phase of the operation:

(a) created a substantial risk of death of or serious bodily injury to another;

(b) took place within 500 feet of a residence, business, church, or school; or

(c) took place in the presence of a person less than 18 years of age.

(4) A person convicted of operation of an unlawful clandestine laboratory shall be fined an amount not to exceed $100,000, be imprisoned in a state prison for a term not to exceed 50 years, or both, if 46-1-401 is complied with and the operation of an unlawful clandestine laboratory or any phase of the operation involved the use of a firearm or booby trap.

History: En. Sec. 2, Ch. 260, L. 2001; amd. Sec. 1, Ch. 146, L. 2003.

Part 2
Procedural Provisions

45-9-201. Repealed. Sec. 3, Ch. 612, L. 1983.

History: En. Sec. 10, Ch. 314, L. 1969; amd. Sec. 6, Ch. 359, L. 1977; R.C.M. 1947, 54-138.

45-9-202. Alternative sentencing authority. (1) A person convicted of a dangerous drug felony offense under this chapter may, in lieu of imprisonment, be sentenced according to the alternatives provided in subsection (2).

(2) If the court determines, either from the face of the record or from a presentence investigation and report, that incarceration of the defendant is not appropriate, the court may, as a condition of a suspended or deferred sentence, impose one or more of the following alternatives:

(a) imposition of a fine not to exceed the maximum amount provided by statute for those offenses that specify a fine as part of the penalty or $1,000 for those offenses that do not specify a fine;

(b) commitment to a residential drug treatment facility licensed and approved by the state for rehabilitative treatment for not less than the minimum recommended time determined necessary by the facility and not more than 1 year;

(c) mandatory service of not more than 2,000 hours in a community-based drug treatment or drug education program with compliance to be monitored by the probation and parole bureau of the department of corrections based upon information provided by the treatment or education program;

(d) if recommended by the probation and parole bureau, placement in a program of intensive probation that requires, at a minimum, that the defendant comply with all of the following conditions:

(i) maintain employment or full-time student status at an approved school, making progress satisfactory to the probation officer, or be involved in supervised job searches and community service work designated by the probation officer;

(ii) pay probation supervision fees through the department of corrections of not less than $50 a month to be deposited in the account established in 46-23-1031;

(iii) find a place to reside approved by the probation officer that may not be changed without the officer's approval;

(iv) remain at the residence at all times except to go to work, to attend school, or to perform community service or as otherwise specifically allowed by the probation officer;

(v) remain drug free and submit to drug and alcohol tests administered randomly not less than once each month by or under supervision of the probation officer;

(vi) perform not less than 10 hours of community service each month as approved by the probation officer, except that full-time students may be exempted or required to perform fewer hours of community service;

(vii) enroll or make satisfactory effort to seek enrollment in an approved drug rehabilitation program; and

(viii) comply with any other conditions imposed by the court to meet the needs of the community and the defendant;

(e) suspension or revocation of the defendant's driver's license issued under Title 61, chapter 5, subject to the following terms and conditions:

(i) upon the first conviction of an offense under this chapter, the driver's license must be suspended for 6 months;

(ii) upon the second conviction, the driver's license must be revoked for 1 year;

(iii) upon a third or subsequent conviction, the driver's license must be revoked for 3 years.

History: En. Sec. 9, Ch. 314, L. 1969; amd. Sec. 5, Ch. 359, L. 1977; R.C.M. 1947, 54-137; amd. Sec. 7, Ch. 451, L. 1983; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 802, L. 1991; amd. Sec. 202, Ch. 546, L. 1995; amd. Sec. 1, Ch. 473, L. 2005.

Cross-References

Criminal possession of dangerous drugs, 45-9-102.

Fraudulently obtaining dangerous drugs, 45-9-104.

Altering labels on dangerous drugs, 45-9-105.

Criminal distribution of, or possession with purpose to distribute, imitation dangerous drug, 45-9-112, 45-9-113.

45-9-203. Surrender of license. If a court suspends or revokes a driver's license under 45-9-202(2)(e), the defendant shall, at the time of sentencing, surrender the license to the court. The court shall forward the license and a copy of the sentencing order to the department of justice. The defendant may apply to the department for issuance of a probationary license under 61-2-302.

History: En. Sec. 2, Ch. 802, L. 1991.

Cross-References

Alternative sentencing authority, 45-9-202.

45-9-204. Immunity from liability. (1) Except as provided in subsections (2) and (3), if a court imposes mandatory service under 45-9-202(2)(c) or community service under 45-9-202(2)(d), a public or private agency supervising the service, treatment, or education program in which the defendant is participating and the officers, agents, and employees of the public or private agency are immune from liability to the defendant for any acts or omissions alleged to have occurred within the course and scope of supervision.

(2) The immunity provided in subsection (1) does not extend to acts or omissions alleged to constitute gross negligence or intentional acts.

(3) The immunity provided in subsection (1) for a public agency does not extend to claims for workers' compensation benefits when the defendant is injured while performing community service.

History: En. Sec. 3, Ch. 802, L. 1991.

Cross-References

Alternative sentencing authority, 45-9-202.

45-9-205. Exemption from mandatory minimum sentences. If a sentencing judge imposes any of the sentencing alternatives specified in 45-9-202, the mandatory minimum sentences provided in 46-18-205(2) do not apply.

History: En. Sec. 4, Ch. 802, L. 1991; amd. Sec. 4, Ch. 125, L. 1995; amd. Sec. 1, Ch. 52, L. 1999.

Cross-References

Alternative sentencing authority, 45-9-202.

45-9-206. Use or possession of property subject to criminal forfeiture -- property subject to criminal forfeiture. (1) A person commits the offense of use or possession of property subject to criminal forfeiture if the person knowingly possesses, owns, uses, or attempts to use property that is subject to criminal forfeiture under this section. A person convicted of the offense of use or possession of property subject to criminal forfeiture shall be imprisoned in the state prison for a term not to exceed 10 years. Upon conviction, the property subject to criminal forfeiture is forfeited to the state and must be disposed of in accordance with the provisions of 44-12-205 and 44-12-206.

(2) The following property is subject to criminal forfeiture under this section:

(a) money, raw materials, products, equipment, and other property of any kind that is used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting a dangerous drug in violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110;

(b) property used or intended for use as a container for property enumerated in subsection (2)(a);

(c) except as provided in subsection (3), a conveyance, including an aircraft, vehicle, or vessel, used or intended for use to facilitate a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110;

(d) books, records, research products and materials, formulas, microfilm, tapes, and data used or intended for use in connection with a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110;

(e) (i) everything of value furnished or intended to be furnished in exchange for a dangerous drug in violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110; and

(ii) all proceeds traceable to such an exchange;

(f) money, negotiable instruments, securities, and weapons used or intended to be used to facilitate a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110;

(g) personal property constituting or derived from proceeds obtained directly or indirectly from a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110; and

(h) real property, including any right, title, and interest in a lot or tract of land and any appurtenances or improvements, that is directly used or intended to be used in any manner to facilitate a violation of or that is derived from or maintained by proceeds resulting from a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110. An owner's interest in real property is not subject to criminal forfeiture by reason of an act or omission unless it is proved that the act or omission was the owner's or was with the owner's express consent.

(3) A conveyance is not subject to criminal forfeiture under this section unless the owner or other person in charge of the conveyance knowingly used the conveyance to violate or knowingly consented to its use for the purpose of violating 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110.

(4) Criminal forfeiture under this section of property that is encumbered by a bona fide security interest is subject to that interest if the secured party did not use or consent to the use of the property in connection with a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110.

(5) Property subject to criminal forfeiture under this section may be seized under the following circumstances:

(a) A peace officer who has probable cause to make an arrest for a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110 may seize a conveyance obtained with proceeds of the violation or used to facilitate the violation and shall immediately deliver the conveyance to the peace officer's law enforcement agency, to be held as evidence until a criminal forfeiture is declared or release ordered.

(b) Property subject to criminal forfeiture under this section may be seized by a peace officer under a search warrant issued by a court having jurisdiction over the property.

(c) Seizure without a warrant may be made if:

(i) the seizure is incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administrative inspection warrant;

(ii) the property was the subject of a prior judgment in favor of the state in a criminal proceeding or a criminal forfeiture proceeding based on this section or on Title 44, chapter 12;

(iii) a peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(iv) a peace officer has probable cause to believe that the property was used or is intended to be used in violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy is a violation of 45-9-101, 45-9-103, or 45-9-110.

(6) As used in this section, "dangerous drug" means a substance designated as a dangerous drug under Title 50, chapter 32, parts 1 and 2.

(7) A prosecution under subsection (1) must be commenced within 45 days of the seizure of the property involved.

History: En. Sec. 1, Ch. 537, L. 1995.

45-9-207 reserved.

45-9-208. Mandatory dangerous drug information course. A person who is convicted of an offense under this chapter and given a sentence that makes the offense a misdemeanor, as defined in 45-2-101, shall, in addition to any other sentence imposed, be sentenced to complete a dangerous drug information course offered by a chemical dependency facility approved by the department of public health and human services under 53-24-208. The sentencing judge may include in the sentencing order a condition that the person shall undergo chemical dependency treatment if a licensed addiction counselor working with the person recommends treatment.

History: En. Sec. 1, Ch. 50, L. 1995; amd. Sec. 196, Ch. 42, L. 1997; amd. Sec. 15, Ch. 23, L. 2001.

CHAPTER 10
MODEL DRUG PARAPHERNALIA ACT

Part 1 -- General Provisions

45-10-101. Definitions.
45-10-102. Determination of what constitutes paraphernalia.
45-10-103. Criminal possession of drug paraphernalia.
45-10-104. Manufacture or delivery of drug paraphernalia.
45-10-105. Delivery of drug paraphernalia to a minor.
45-10-106. Advertisement of drug paraphernalia.
45-10-107. Exemptions.
45-10-108. Mandatory dangerous drug information course.

Part 1
General Provisions

Part Cross-References

Destruction or appropriation of physical evidence in criminal cases, 46-5-306 through 46-5-309.

45-10-101. Definitions. (1) As used in this part, the term "drug paraphernalia" means all equipment, products, and materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a dangerous drug. It includes but is not limited to:

(a) kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant that is a dangerous drug or from which a dangerous drug can be derived;

(b) kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing dangerous drugs;

(c) isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant that is a dangerous drug;

(d) testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of dangerous drugs;

(e) scales and balances used, intended for use, or designed for use in weighing or measuring dangerous drugs;

(f) dilutents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting dangerous drugs;

(g) separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana;

(h) blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding dangerous drugs;

(i) capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of dangerous drugs;

(j) containers and other objects used, intended for use, or designed for use in storing or concealing dangerous drugs;

(k) objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, or other dangerous drug as defined by 50-32-101 into the human body, such as:

(i) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(ii) water pipes;

(iii) carburetion tubes and devices;

(iv) smoking and carburetion masks;

(v) roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(vi) miniature cocaine spoons and cocaine vials;

(vii) chamber pipes;

(viii) carburetor pipes;

(ix) electric pipes;

(x) air-driven pipes;

(xi) chillums;

(xii) bongs;

(xiii) ice pipes or chillers.

(2) Words or phrases used in this part that are not defined by this section have the meaning given to them by the definitions contained in 50-32-101 unless the usage clearly indicates a different intent.

History: En. Sec. 1, Ch. 481, L. 1981.

45-10-102. Determination of what constitutes paraphernalia. In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(1) statements by an owner or by anyone in control of the object concerning its use;

(2) prior convictions, if any, of an owner or of anyone in control of the object, under any state or federal law relating to any controlled substance or dangerous drug;

(3) the proximity of the object, in time and space, to a direct violation of this part;

(4) the proximity of the object to dangerous drugs;

(5) the existence of any residue of dangerous drugs on the object;

(6) direct or circumstantial evidence of the intent of an owner or of anyone in control of the object to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of 45-10-103 through 45-10-106. The innocence of an owner or of anyone in control of the object as to a direct violation of 45-10-103 through 45-10-106 does not prevent a finding that the object is intended for use or designed for use as drug paraphernalia.

(7) instructions, oral or written, provided with the object concerning its use;

(8) descriptive materials accompanying the object which explain or depict its use;

(9) national and local advertising concerning its use;

(10) the manner in which the object is displayed for sale;

(11) whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(12) direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;

(13) the existence and scope of legitimate uses for the object in the community;

(14) expert testimony concerning its use.

History: En. Sec. 2, Ch. 481, L. 1981.

45-10-103. Criminal possession of drug paraphernalia. It is unlawful for a person to use or to possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug. A person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined an amount of not more than $500, or both. A person convicted of a first violation of this section is presumed to be entitled to a deferred imposition of sentence of imprisonment.

History: En. Sec. 3, Ch. 481, L. 1981; amd. Sec. 2, Ch. 100, L. 2001.

45-10-104. Manufacture or delivery of drug paraphernalia. It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing or under circumstances where one reasonably should know that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug. Any person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined not more than $500, or both.

History: En. Sec. 4, Ch. 481, L. 1981.

45-10-105. Delivery of drug paraphernalia to a minor. Any person 18 years of age or over who violates 45-10-104 by delivering drug paraphernalia to a person under 18 years of age who is at least 3 years his junior is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 1 year, fined not more than $1,000, or both.

History: En. Sec. 5, Ch. 481, L. 1981.

45-10-106. Advertisement of drug paraphernalia. It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement knowing or under circumstances where one reasonably should know that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined not more than $500, or both.

History: En. Sec. 6, Ch. 481, L. 1981.

45-10-107. Exemptions. Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice and persons in compliance with Title 50, chapter 46, are exempt from this part.

History: En. Sec. 7, Ch. 481, L. 1981; amd. Sec. 91, Ch. 114, L. 2003; amd. Sec. 16, I.M. No. 148, approved Nov. 2, 2004.

45-10-108. Mandatory dangerous drug information course. A person who is convicted of an offense under this chapter and given a sentence that makes the offense a misdemeanor, as defined in 45-2-101, shall, in addition to any other sentence imposed, be sentenced to complete a dangerous drug information course offered by a chemical dependency facility approved by the department of public health and human services under 53-24-208. The sentencing judge may include in the sentencing order a condition that the person shall undergo chemical dependency treatment if a licensed addiction counselor working with the person recommends treatment.

History: En. Sec. 1, Ch. 50, L. 1995; amd. Sec. 197, Ch. 42, L. 1997; amd. Sec. 16, Ch. 23, L. 2001.

TITLE 50
HEALTH AND SAFETY

CHAPTER 16
HEALTH CARE INFORMATION

Part 1 -- General Provisions

50-16-101. Public officials and corporations to furnish information on request.

50-16-102. Information on infant morbidity and mortality.

Part 2 -- Professional Review Committees

50-16-201. Definitions.
50-16-202. Committees to have access to information.
50-16-203. Committee health care information and proceedings confidential and privileged.
50-16-204. Restrictions on use or publication of information.
50-16-205. Data confidential -- inadmissible in judicial proceedings.

Part 3 -- Confidentiality of Health Care Information (Repealed)

Part 4 -- Health Information Center (Repealed)

Part 5 -- Uniform Health Care Information

50-16-501. Short title.
50-16-502. Legislative findings.
50-16-503. Uniformity of application and construction.
50-16-504. Definitions.
50-16-505. Limit on applicability.
50-16-506 through 50-16-510 reserved.
50-16-511. Duty to adopt security safeguards.
50-16-512. Content and dissemination of notice.
50-16-513. Retention of record.
50-16-514 through 50-16-520 reserved.
50-16-521. Health care representatives.
50-16-522. Representative of deceased patient.
50-16-523 and 50-16-524 reserved.
50-16-525. Disclosure by health care provider.
50-16-526. Patient authorization to health care provider for disclosure.
50-16-527. Patient authorization -- retention -- effective period -- exception -- communication without prior notice for workers' compensation purposes.
50-16-528. Patient's revocation of authorization for disclosure.
50-16-529. Disclosure without patient's authorization based on need to know.
50-16-530. Disclosure without patient's authorization.
50-16-531. Immunity of health care providers pursuant to written authorization -- form required.
50-16-532 through 50-16-534 reserved.
50-16-535. When health care information available by compulsory process.
50-16-536. Method of compulsory process.
50-16-537 through 50-16-539 reserved.
50-16-540. Reasonable fees allowed.
50-16-541. Requirements and procedures for patient's examination and copying.
50-16-542. Denial of examination and copying.
50-16-543. Request for correction or amendment.
50-16-544. Procedure for adding correction, amendment, or statement of disagreement.
50-16-545. Dissemination of corrected or amended information or statement of disagreement.
50-16-546 through 50-16-550 reserved.
50-16-551. Criminal penalty.
50-16-552. Civil enforcement.
50-16-553. Civil remedies.

Part 6 -- Government Health Care Information

50-16-601. Short title.
50-16-602. Definitions.
50-16-603. Confidentiality of health care information.

50-16-604. Secondary release of health care information.
50-16-605. Judicial, legislative, and administrative proceedings -- testimony.
50-16-606. Correlation with Uniform Health Care Information Act.
50-16-607 through 50-16-610 reserved.
50-16-611. Penalty.

Part 7 -- Report of Exposure to Infectious Disease

50-16-701. Definitions.
50-16-702. Notification of exposure to infectious disease -- report of exposure to disease.
50-16-703. Notification of precautions after exposure to infectious disease.
50-16-704. Confidentiality -- penalty for violation -- immunity from liability.
50-16-705. Rulemaking authority.
50-16-706 through 50-16-710 reserved.
50-16-711. Health care facility and emergency services organization responsibilities for tracking exposure to infectious disease.
50-16-712. Notification to mortuary personnel -- exposure to infectious disease.

Part 8 -- Health Care Information Privacy Requirements for Providers Subject to HIPAA

50-16-801. Legislative findings.
50-16-802. Applicability.
50-16-803. Definitions.
50-16-804. Representative of deceased patient's estate.
50-16-805. Disclosure of information for workers' compensation and occupational disease claims and law enforcement purposes.
50-16-806 through 50-16-810 reserved.
50-16-811. When health care information available by compulsory process.
50-16-812. Method of compulsory process.
50-16-813 through 50-16-815 reserved.
50-16-816. Reasonable fees.
50-16-817. Civil remedies.
50-16-818. Good faith.

Part 9 reserved

Part 10 -- AIDS Education and Prevention

50-16-1001. Short title.
50-16-1002. Statement of purpose.
50-16-1003. Definitions.
50-16-1004. AIDS, HIV-related conditions, and HIV infection to be treated as other communicable diseases.
50-16-1005 and 50-16-1006 reserved.
50-16-1007. Testing -- counseling -- informed consent -- penalty.
50-16-1008. Testing of donors of organs, tissues, and semen required -- penalty.
50-16-1009. Confidentiality of records -- notification of contacts -- penalty for unlawful disclosure.
50-16-1010 through 50-16-1012 reserved.
50-16-1013. Civil remedy.

Part 1
General Provisions

50-16-101. Public officials and corporations to furnish information on request. On request, employees and officers of firms and corporations and public officials shall furnish public health information to the department of public health and human services.

History: En. Sec. 14, Ch. 197, L. 1967; R.C.M. 1947, 69-4114; amd. Sec. 107, Ch. 418, L. 1995; amd. Sec. 284, Ch. 546, L. 1995.

50-16-102. Information on infant morbidity and mortality. (1) If information on infant morbidity and mortality will be used to reduce those problems, data relating to the condition and treatment of any person may be given to the department of public health and human services, Montana medical association, an allied society of the Montana medical association, a committee of a nationally organized medical society or research group, or an inhospital staff committee.

(2) A person who furnishes information under subsection (1) is immune from suit for damages arising from the release of the data or publication of findings and conclusions based on the data.

(3) Data supplied under subsection (1) may be used or published only for advancing medical research or medical education in the interest of reducing infant morbidity or mortality. A summary of studies based on the data may be released for general publication.

(4) The identity of a person whose condition or treatment was studied is confidential and may not be revealed under any circumstances.

(5) Any data supplied or studies based on this data are privileged communications and may not be used as evidence in any legal proceeding. Any attempt to use or offer to supply the data or studies, without consent of the person treated or the person's legal representative, is prejudicial error resulting in a mistrial.

History: En. Sec. 15, Ch. 197, L. 1967; R.C.M. 1947, 69-4115; amd. Sec. 108, Ch. 418, L. 1995; amd. Sec. 285, Ch. 546, L. 1995.

Part 2
Professional Review Committees

50-16-201. Definitions. As used in this part, the following definitions apply:

(1) (a) "Data" means written reports, notes, or records or oral reports or proceedings created by or at the request of a utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee of a health care facility that are used exclusively in connection with quality assessment or improvement activities, including the professional training, supervision, or discipline of a medical practitioner by a health care facility.

(b) The term does not include:

(i) incident reports or occurrence reports; or

(ii) health care information that is used in whole or in part to make decisions about an individual who is the subject of the health care information.

(2) "Health care facility" has the meaning provided in 50-5-101.

(3) (a) "Incident reports" or "occurrence reports" means a written business record of a health care facility, created in response to an untoward event, such as a patient injury, adverse outcome, or interventional error, for the purpose of ensuring a prompt evaluation of the event.

(b) The terms do not include any subsequent evaluation of the event in response to an incident report or occurrence report by a utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee.

(4) "Medical practitioner" means an individual licensed by the state of Montana to engage in the practice of medicine, osteopathy, podiatry, optometry, or a nursing specialty described in 37-8-202 or licensed as a physician assistant pursuant to 37-20-203.

History: En. Sec. 4, Ch. 104, L. 1969; R.C.M. 1947, 69-6304; amd. Sec. 1, Ch. 359, L. 2001; amd. Sec. 5, Ch. 396, L. 2003; amd. Sec. 124, Ch. 467, L. 2005; amd. Sec. 25, Ch. 519, L. 2005.

50-16-202. Committees to have access to information. It is in the interest of public health and patient medical care that health care facility committees have access to the records and other health care information relating to the condition and treatment of patients in the health care facility to study and evaluate for the purpose of evaluating matters relating to the care and treatment of patients for research purposes and for the purpose of reducing morbidity or mortality and obtaining statistics and information relating to the prevention and treatment of diseases, illnesses, and injuries. To carry out these purposes, any health care facility and its agents and employees may provide medical records or other health care information relating to the condition and treatment of any patient in the health care facility to any utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee of the health care facility.

History: En. Sec. 1, Ch. 104, L. 1969; R.C.M. 1947, 69-6301(part); amd. Sec. 2, Ch. 359, L. 2001.

50-16-203. Committee health care information and proceedings confidential and privileged. All records and health care information referred to in 50-16-202 are confidential and privileged to the committee and the members of the committee as though the health care facility patients were the patients of the members of the committee. All proceedings, records, and reports of committees are confidential and privileged.

History: En. Sec. 1, Ch. 104, L. 1969; R.C.M. 1947, 69-6301(part); amd. Sec. 3, Ch. 359, L. 2001.

Cross-References

Doctor-patient privilege, 26-1-805.

Privileges, Rules 501 through 505, M.R.Ev. (see Title 26, ch. 10).

50-16-204. Restrictions on use or publication of information. A utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee of a health care facility may use or publish health care information only for the purpose of evaluating matters of medical care, therapy, and treatment for research and statistical purposes. Neither a committee nor the members, agents, or employees of a committee shall disclose the name or identity of any patient whose records have been studied in any report or publication of findings and conclusions of a committee, but a committee and its members, agents, or employees shall protect the identity of any patient whose condition or treatment has been studied and may not disclose or reveal the name of any health care facility patient.

History: En. Sec. 2, Ch. 104, L. 1969; R.C.M. 1947, 69-6302; amd. Sec. 4, Ch. 359, L. 2001.

50-16-205. Data confidential -- inadmissible in judicial proceedings. All data is confidential and is not discoverable or admissible in evidence in any judicial proceeding. However, this section does not affect the discoverability or admissibility in evidence of health care information that is not data as defined in 50-16-201.

History: En. Sec. 3, Ch. 104, L. 1969; R.C.M. 1947, 69-6303; amd. Sec. 5, Ch. 359, L. 2001.

Cross-References

Montana Rules of Evidence, Title 26, ch. 10.

Part 3
Confidentiality of Health Care Information (Repealed)

50-16-301. Repealed. Sec. 31, Ch. 632, L. 1987.

History: En. Sec. 1, Ch. 578, L. 1979.

50-16-302. Repealed. Sec. 31, Ch. 632, L. 1987.

History: En. Sec. 2, Ch. 578, L. 1979.

50-16-303. Repealed. Sec. 31, Ch. 632, L. 1987.

History: En. Sec. 6, Ch. 578, L. 1979.

50-16-304. Repealed. Sec. 31, Ch. 632, L. 1987.

History: En. Sec. 8, Ch. 578, L. 1979.

50-16-305. Repealed. Sec. 31, Ch. 632, L. 1987.

History: En. Sec. 7, Ch. 578, L. 1979.

50-16-306 through 50-16-310 reserved.

50-16-311. Repealed. Sec. 31, Ch. 632, L. 1987.

History: En. Sec. 3, Ch. 578, L. 1979; amd. Sec. 1, Ch. 725, L. 1985.

50-16-312. Repealed. Sec. 31, Ch. 632, L. 1987.

History: En. Sec. 4, Ch. 578, L. 1979.

50-16-313. Repealed. Sec. 31, Ch. 632, L. 1987.

History: En. Sec. 4, Ch. 578, L. 1979.

50-16-314. Repealed. Sec. 31, Ch. 632, L. 1987.

History: En. Sec. 5, Ch. 578, L. 1979.

Part 4
Health Information Center (Repealed)

50-16-401. Repealed. Sec. 1, Ch. 66, L. 1987.
History: En. Sec. 1, Ch. 628, L. 1983.

Part Cross-References
Right of privacy guaranteed, Art. II, sec. 10, Mont. Const.

Part 5
Uniform Health Care Information

50-16-501. Short title. This part may be cited as the "Uniform Health Care Information Act".
History: En. Sec. 1, Ch. 632, L. 1987.

50-16-502. Legislative findings. The legislature finds that:

(1) health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy and health care or other interests;

(2) patients need access to their own health care information as a matter of fairness, to enable them to make informed decisions about their health care and to correct inaccurate or incomplete information about themselves;

(3) in order to retain the full trust and confidence of patients, health care providers have an interest in ensuring that health care information is not improperly disclosed and in having clear and certain rules for the disclosure of health care information;

(4) persons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient's interest in the proper use and disclosure of the patient's health care information survives even when the information is held by persons other than health care providers.

(5) the movement of patients and their health care information across state lines, access to and exchange of health care information from automated data banks, and the emergence of multistate health care providers creates a compelling need for uniform law, rules, and procedures governing the use and disclosure of health care information.

(6) the enactment of federal health care privacy legislation and the adoption of rules pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d, et seq., require health care providers subject to that legislation to provide significant privacy protection for health care information and the provisions of this part are no longer necessary for those health care providers; and

(7) because the provisions of HIPAA do not apply to some health care providers, it is important that these health care providers continue to adhere to this part.
History: En. Sec. 2, Ch. 632, L. 1987; amd. Sec. 6, Ch. 396, L. 2003.

50-16-503. Uniformity of application and construction. This part must be applied and construed to effectuate their general purpose to make uniform the laws with respect to the treatment of health care information among states enacting them.
History: En. Sec. 3, Ch. 632, L. 1987.

50-16-504. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Audit" means an assessment, evaluation, determination, or investigation of a health care provider by a person not employed by or affiliated with the provider, to determine compliance with:

(a) statutory, regulatory, fiscal, medical, or scientific standards;

(b) a private or public program of payments to a health care provider; or

(c) requirements for licensing, accreditation, or certification.

(2) "Directory information" means information disclosing the presence and the general health condition of a patient who is an inpatient in a health care facility or who is receiving emergency health care in a health care facility.

(3) "General health condition" means the patient's health status described in terms of critical, poor, fair, good, excellent, or terms denoting similar conditions.

(4) "Health care" means any care, service, or procedure provided by a health care provider, including medical or psychological diagnosis, treatment, evaluation, advice, or other services that affect the structure or any function of the human body.

(5) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(6) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and relates to the patient's health care. The term includes any record of disclosures of health care information.

(7) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

(8) "Institutional review board" means a board, committee, or other group formally designated by an institution or authorized under federal or state law to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(9) "Maintain", as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

(10) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(11) "Peer review" means an evaluation of health care services by a committee of a state or local professional organization of health care providers or a committee of medical staff of a licensed health care facility. The committee must be:

(a) authorized by law to evaluate health care services; and

(b) governed by written bylaws approved by the governing board of the health care facility or an organization of health care providers.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

(13) "Reasonable fee" means the charge, as provided for in 50-16-540, for duplicating, searching for, or handling recorded health care information.

History: En. Sec. 4, Ch. 632, L. 1987; amd. Sec. 2, Ch. 300, L. 1999; amd. Sec. 7, Ch. 396, L. 2003.

Cross-References

Government health care information -- definition of health care information, 50-16-602.

50-16-505. Limit on applicability. The provisions of this part apply only to a health care provider that is not subject to the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d, et seq., and administrative rules adopted in connection with HIPAA.

History: En. Sec. 8, Ch. 396, L. 2003.

50-16-506 through 50-16-510 reserved.

50-16-511. Duty to adopt security safeguards. A health care provider shall effect reasonable safeguards for the security of all health care information it maintains.

History: En. Sec. 21, Ch. 632, L. 1987.

50-16-512. Content and dissemination of notice. (1) A health care provider who provides health care at a health care facility that the provider operates and who maintains a record of a patient's health care information shall create a notice of information practices, in substantially the following form:

NOTICE

"We keep a record of the health care services we provide for you. You may ask us to see and copy that record. You may also ask us to correct that record. We will not disclose your record to others unless you direct us to do so or unless the law authorizes or compels us to do so. You may see your record or get more information about it at ....."

(2) The health care provider shall post a copy of the notice of information practices in a conspicuous place in the health care facility and upon request provide patients or prospective patients with a copy of the notice.

History: En. Sec. 18, Ch. 632, L. 1987.

50-16-513. Retention of record. A health care provider shall maintain a record of existing health care information for at least 1 year following receipt of an authorization to disclose that health care information under 50-16-526 and during the pendency of a request for examination and copying under 50-16-541 or a request for correction or amendment under 50-16-543.

History: En. Sec. 22, Ch. 632, L. 1987.

Cross-References

Records and reports required of health care facilities -- confidentiality, 50-5-106.

Maintenance and confidentiality of records concerning persons with developmental disabilities, 53-20-161.

50-16-514 through 50-16-520 reserved.

50-16-521. Health care representatives. (1) A person authorized to consent to health care for another may exercise the rights of that person under this part to the extent necessary to effectuate the terms or purposes of the grant of authority. If the patient is a minor and is authorized under 41-1-402 to consent to health care without parental consent, only the minor may exclusively exercise the rights of a patient under this part as to information pertaining to health care to which the minor lawfully consented.

(2) A person authorized to act for a patient shall act in good faith to represent the best interests of the patient.

History: En. Sec. 19, Ch. 632, L. 1987.

50-16-522. Representative of deceased patient. A personal representative of a deceased patient may exercise all of the deceased patient's rights under this part. If there is no personal representative or upon discharge of the personal representative, a deceased patient's rights under this part may be exercised by the surviving spouse, a parent, an adult child, an adult sibling, or any other person who is authorized by law to act for him.

History: En. Sec. 20, Ch. 632, L. 1987; amd. Sec. 1, Ch. 657, L. 1989.

50-16-523 and 50-16-524 reserved.

50-16-525. Disclosure by health care provider. (1) Except as authorized in 50-16-529, 50-16-530, and 50-19-402 or as otherwise specifically provided by law or the Montana Rules of Civil Procedure, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent or employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

(2) A health care provider shall maintain, in conjunction with a patient's recorded health care information, a record of each person who has received or examined, in whole or in part, the recorded health care information during the preceding 3 years, except for a person who has examined the recorded health care information under 50-16-529(1) or (2). The record of disclosure must include the name, address, and institutional affiliation, if any, of each person receiving or examining the recorded health care information, the date of the receipt or examination, and to the extent practicable a description of the information disclosed.

History: En. Sec. 5, Ch. 632, L. 1987; amd. Sec. 2, Ch. 657, L. 1989; amd. Sec. 8, Ch. 519, L. 1997.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Doctor-patient privilege, 26-1-805.

Privileges, Rules 501 through 505, M.R.Ev. (see Title 26, ch. 10).

Gunshot or stab wounds -- reporting by health care practitioners, 37-2-302.

Release of information by physician concerning minor, 41-1-403.

Records and reports required of health care facilities -- confidentiality, 50-5-106.

Confidentiality under Tumor Registry Act, 50-15-704.

Unauthorized divulgence of serological test information, 50-19-108.

Maintenance and confidentiality of records concerning persons with developmental disabilities, 53-20-161.

Confidentiality of records concerning mental illness, 53-21-166.

Records of chemically dependent persons, intoxicated persons, and family members, 53-24-306.

50-16-526. Patient authorization to health care provider for disclosure. (1) A patient may authorize a health care provider to disclose the patient's health care information. A health care provider shall honor an authorization and, if requested, provide a copy of the recorded health care information unless the health care provider denies the patient access to health care information under 50-16-542.

(2) A health care provider may charge a reasonable fee, not to exceed the fee provided for in 50-16-540, and is not required to honor an authorization until the fee is paid.

(3) To be valid, a disclosure authorization to a health care provider must:

(a) be in writing, dated, and signed by the patient;

(b) identify the nature of the information to be disclosed; and

(c) identify the person to whom the information is to be disclosed.

(4) Except as provided by this part, the signing of an authorization by a patient is not a waiver of any rights a patient has under other statutes, the Montana Rules of Evidence, or common law.

History: En. Sec. 6, Ch. 632, L. 1987; amd. Sec. 3, Ch. 300, L. 1999.

Cross-References

Privileges, Rules 501 through 505, M.R.Ev. (see Title 26, ch. 10).

50-16-527. Patient authorization -- retention -- effective period -- exception -- communication without prior notice for workers' compensation purposes. (1) A health care provider shall retain each authorization or revocation in conjunction with any health care information from which disclosures are made.

(2) Except for authorizations to provide information to third-party health care payors, an authorization may not permit the release of health care information relating to health care that the patient receives more than 6 months after the authorization was signed.

(3) Health care information disclosed under an authorization is otherwise subject to this part. An authorization becomes invalid after the expiration date contained in the authorization, which may not exceed 30 months. If the authorization does not contain an expiration date, it expires 6 months after it is signed.

(4) Notwithstanding subsections (2) and (3), a signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, or to the agent of a workers' compensation insurer by the health care provider. The disclosure authorized by this subsection authorizes the physician or other health care provider to disclose or release only information relevant to the claimant's condition. Health care information relevant to the claimant's condition may include past history of the complaints of or the treatment of a condition that is similar to that presented in the claim, conditions for which benefits are subsequently claimed, other conditions related to the same body part, or conditions that may affect recovery. A release of information related to workers' compensation must be consistent with the provisions of this subsection. Authorization under this section is effective only as long as the claimant is claiming benefits. This subsection may not be construed to restrict the scope of discovery or disclosure of health care information as allowed under the Montana Rules of Civil Procedure, by the workers' compensation court, or as otherwise provided by law.

(5) A signed claim for workers' compensation or occupational disease benefits or a signed release authorizes a workers' compensation insurer, as defined in 39-71-116, or the agent of the workers' compensation insurer to communicate with a physician or other health care provider about relevant health care information, as authorized in subsection (4), by telephone, letter, electronic communication, in person, or by other means, about a claim and to receive from the physician or health care provider the information authorized in subsection (4) without prior notice to the injured employee, to the employee's authorized representative or agent, or in the case of death, to the employee's personal representative or any person with a right or claim to compensation for the injury or death.

History: En. Sec. 7, Ch. 632, L. 1987; amd. Sec. 13, Ch. 333, L. 1989; amd. Sec. 1, Ch. 480, L. 1999; amd. Sec. 5, Ch. 464, L. 2003.

50-16-528. Patient's revocation of authorization for disclosure. A patient may revoke a disclosure authorization to a health care provider at any time unless disclosure is required to effectuate payments for health care that has been provided or other substantial action has been taken in reliance on the authorization. A patient may not maintain an action against the health care provider for disclosures made in good faith reliance on an authorization if the health care provider had no notice of the revocation of the authorization.

History: En. Sec. 8, Ch. 632, L. 1987.

50-16-529. Disclosure without patient's authorization based on need to know. A health care provider may disclose health care information about a patient without the patient's authorization, to the extent a recipient needs to know the information, if the disclosure is:

(1) to a person who is providing health care to the patient;

(2) to any other person who requires health care information for health care education; to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services to the health care provider; for assisting the health care provider in the delivery of health care; or to a third-party health care payor who requires health care information and if the health care provider reasonably believes that the person will:

(a) not use or disclose the health care information for any other purpose; and

(b) take appropriate steps to protect the health care information;

(3) to any other health care provider who has previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider not to make the disclosure;

(4) to immediate family members of the patient or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with the laws of the state and good medical or other professional practice, unless the patient has instructed the health care provider not to make the disclosure;

(5) to a health care provider who is the successor in interest to the health care provider maintaining the health care information;

(6) for use in a research project that an institutional review board has determined:

(a) is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(b) is impracticable without the use or disclosure of the health care information in individually identifiable form;

(c) contains reasonable safeguards to protect the information from improper disclosure;

(d) contains reasonable safeguards to protect against directly or indirectly identifying any patient in any report of the research project; and

(e) contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

(7) to a person who obtains information for purposes of an audit, if that person agrees in writing to:

(a) remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(b) not disclose the information further, except to accomplish the audit or to report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient or other unlawful conduct by a health care provider;

(8) to an official of a penal or other custodial institution in which the patient is detained; and

(9) to any contact, as defined in 50-16-1003, if the health care provider reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the contact or any other individual.

History: En. Sec. 9, Ch. 632, L. 1987; amd. Sec. 3, Ch. 657, L. 1989; amd. Sec. 6, Ch. 544, L. 1991.

Cross-References

Duty of mental health professionals to warn of violent patients, 27-1-1102.

Nonliability for peer review, 37-2-201.

Pharmacists not liable for peer review, 37-7-1101.

Release of information by physician concerning minor, 41-1-403.

Maintenance and confidentiality of records concerning persons with developmental disabilities, 53-20-161.

Confidentiality of records concerning mental illness, 53-21-166.

50-16-530. Disclosure without patient's authorization. A health care provider may disclose health care information about a patient without the patient's authorization if the disclosure is:

(1) directory information, unless the patient has instructed the health care provider not to make the disclosure;

(2) to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information or when needed to protect the public health;

(3) to federal, state, or local law enforcement authorities to the extent required by law;

(4) to a law enforcement officer about the general physical condition of a patient being treated in a health care facility if the patient was injured on a public roadway or was injured by the possible criminal act of another;

(5) in response to a request of the office of victims services for information under 53-9-104(2)(b);

(6) pursuant to compulsory process in accordance with 50-16-535 and 50-16-536;

(7) pursuant to 50-16-712; or

(8) to the state medical examiner or a county coroner for use in determining cause of death. The information is required to be held confidential as provided by law.

History: En. Sec. 10, Ch. 632, L. 1987; amd. Sec. 1, Ch. 68, L. 1989; amd. Sec. 2, Ch. 396, L. 1995; amd. Sec. 1, Ch. 101, L. 2001; amd. Sec. 2, Ch. 124, L. 2001.

50-16-531. Immunity of health care providers pursuant to written authorization -- form required. A health care provider who discloses health care information within the possession of the provider, including health care information from another provider, is immune from any civil cause of action by the patient or the patient's heirs or successors in interest that is based upon delivery to the patient or the patient's designee of health care information concerning the patient that is contained in the health care provider's patient file if the information is disclosed in accordance with a written authorization using the following language:

"All health care information in your possession, whether generated by you or by any other source, may be released to me or to .....(named person) for .....(purpose of the disclosure). This release is subject to revocation at any time. The revocation is effective from the time it is communicated to the health care provider. If not revoked, the release terminates in accordance with 50-16-527.

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(Signature of patient)"

History: En. Sec. 1, Ch. 469, L. 1993.

50-16-532 through 50-16-534 reserved.

50-16-535. When health care information available by compulsory process. (1) Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

(a) the patient has authorized in writing the release of the health care information in response to compulsory process or a discovery request;

(b) the patient has waived the right to claim confidentiality for the health care information sought;

(c) the patient is a party to the proceeding and has placed the patient's physical or mental condition in issue;

(d) the patient's physical or mental condition is relevant to the execution or witnessing of a will or other document;

(e) the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;

(f) a patient's health care information is to be used in the patient's commitment proceeding;

(g) the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so

obtained may not be used in any proceeding against the patient unless the matter relates to payment for the patient's health care or unless authorized under subsection (1)(j);

(h) the health care information is relevant to a proceeding brought under 50-16-551 through 50-16-553;

(i) the health care information is relevant to a proceeding brought under Title 41, chapter 3;

(j) a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest; or

(k) the health care information is requested pursuant to an investigative subpoena issued under 46-4-301 or a similar federal law.

(2) This part does not authorize the disclosure of health care information by compulsory legal process or discovery in any judicial, legislative, or administrative proceeding in which disclosure is otherwise prohibited by law.

History: En. Sec. 11, Ch. 632, L. 1987; amd. Sec. 4, Ch. 657, L. 1989; amd. Sec. 9, Ch. 396, L. 2003; amd. Sec. 24, Ch. 504, L. 2003.

Cross-References

Government health care information -- legal proceedings, 50-16-605.

50-16-536. Method of compulsory process. (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under 50-16-535(1)(b), (1)(d), or (1)(e) or in a civil proceeding or investigation under 50-16-535(1)(j), the person seeking discovery or compulsory process shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) of this section to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or by the person's authorized representative, identifying at least one subsection of 50-16-535 under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under 50-16-535(1)(b), (1)(d), or (1)(e) or in a civil proceeding under 50-16-535(1)(j), that the requirements of subsection (1) of this section for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of 50-16-535 identified in the certification provides an appropriate basis for the use of discovery or compulsory process. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

(3) In response to service of compulsory process or discovery requests, when authorized by law, a health care provider may deny access to the requested health care information. Additionally, a health care provider may deny access to the requested health care information under 50-16-542(1). If access to requested health care information is denied by the health care provider under 50-16-542(1), the health care provider shall submit to the court by affidavit or other reasonable means an explanation of why the health care provider believes the information should be protected from disclosure.

(4) When access to health care information is denied under 50-16-542(1), the court may order disclosure of health care information, with or without restrictions as to its use, as the court considers necessary. In deciding whether to order disclosure, the court shall consider the explanation submitted by the health care provider, the reasons for denying access to health care information set forth in 50-16-542(1), and any arguments presented by interested parties.

(5) A health care provider required to disclose health care information pursuant to compulsory process may charge a reasonable fee, not to exceed the fee provided for in 50-16-540, and may deny examination or copying of the information until the fee is paid.

(6) Production of health care information under 50-16-535 and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure.

History: En. Sec. 12, Ch. 632, L. 1987; amd. Sec. 5, Ch. 657, L. 1989; amd. Sec. 44, Ch. 16, L. 1991; amd. Sec. 4, Ch. 300, L. 1999; amd. Sec. 25, Ch. 504, L. 2003.

50-16-537 through 50-16-539 reserved.

50-16-540. Reasonable fees allowed. A reasonable fee for providing health care information may not exceed 50 cents for each page for a paper copy or photocopy. A reasonable fee may include an administrative fee that may not exceed $15 for searching and handling recorded health care information.

History: En. Sec. 1, Ch. 300, L. 1999.

50-16-541. Requirements and procedures for patient's examination and copying. (1) Upon receipt of a written request from a patient to examine or copy all or part of the patient's recorded health care information, a health care provider, as promptly as required under the circumstances but no later than 10 days after receiving the request, shall:

(a) make the information available to the patient for examination, without charge, during regular business hours or provide a copy, if requested, to the patient;

(b) inform the patient if the information does not exist or cannot be found;

(c) if the health care provider does not maintain a record of the information, inform the patient and provide the name and address, if known, of the health care provider who maintains the record;

(d) if the information is in use or unusual circumstances have delayed handling the request, inform the patient and specify in writing the reasons for the delay and the earliest date, not later than 21 days after receiving the request, when the information will be available for examination or copying or when the request will be otherwise disposed of; or

(e) deny the request in whole or in part under 50-16-542 and inform the patient.

(2) Upon request, the health care provider shall provide an explanation of any code or abbreviation used in the health care information. If a record of the particular health care information requested is not maintained by the health care provider in the requested form, the health care provider is not required to create a new record or reformulate an existing record to make the information available in the requested form. The health care provider may charge a reasonable fee for each request, not to exceed the fee provided for in 50-16-540, for providing the health care information and is not required to provide copies until the fee is paid.

History: En. Sec. 13, Ch. 632, L. 1987; amd. Sec. 5, Ch. 300, L. 1999.

50-16-542. Denial of examination and copying. (1) A health care provider may deny access to health care information by a patient if the health care provider reasonably concludes that:

(a) knowledge of the health care information would be injurious to the health of the patient;

(b) knowledge of the health care information could reasonably be expected to lead to the patient's identification of an individual who provided the information in confidence and under circumstances in which confidentiality was appropriate;

(c) knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;

(d) the health care information is data, as defined in 50-16-201, that is compiled and used solely for utilization review, peer review, medical ethics review, quality assurance, or quality improvement;

(e) the health care information might contain information protected from disclosure pursuant to 50-15-121 and 50-15-122;

(f) the health care provider obtained the information from a person other than the patient; or

(g) access to the health care information is otherwise prohibited by law.

(2) Except as provided in 50-16-521, a health care provider may deny access to health care information by a patient who is a minor if:

(a) the patient is committed to a mental health facility; or

(b) the patient's parents or guardian has not authorized the health care provider to disclose the patient's health care information.

(3) If a health care provider denies a request for examination and copying under this section, the provider, to the extent possible, shall segregate health care information for which access has been denied under subsection (1) from information for which access cannot be denied and permit the patient to examine or copy the information subject to disclosure.

(4) If a health care provider denies a patient's request for examination and copying, in whole or in part, under subsection (1)(a) or (1)(c), the provider shall permit examination and copying of the record by the patient's spouse, adult child, or parent or guardian or by another health care provider who is providing health care services to the patient for the same condition as the health care provider denying the request. The health care provider denying the request shall inform the patient of the patient's right to select another health care provider under this subsection.

History: En. Sec. 14, Ch. 632, L. 1987; amd. Sec. 6, Ch. 657, L. 1989; amd. Sec. 19, Ch. 515, L. 1995; amd. Sec. 6, Ch. 359, L. 2001.

50-16-543. Request for correction or amendment. (1) For purposes of accuracy or completeness, a patient may request in writing that a health care provider correct or amend its record of the patient's health care information to which he has access under 50-16-541.

(2) As promptly as required under the circumstances but no later than 10 days after receiving a request from a patient to correct or amend its record of the patient's health care information, the health care provider shall:

(a) make the requested correction or amendment and inform the patient of the action and of the patient's right to have the correction or amendment sent to previous recipients of the health care information in question;

(b) inform the patient if the record no longer exists or cannot be found;

(c) if the health care provider does not maintain the record, inform the patient and provide him with the name and address, if known, of the person who maintains the record;

(d) if the record is in use or unusual circumstances have delayed the handling of the correction or amendment request, inform the patient and specify in writing the earliest date, not later than 21 days after receiving the request, when the correction or amendment will be made or when the request will otherwise be disposed of; or

(e) inform the patient in writing of the provider's refusal to correct or amend the record as requested, the reason for the refusal, and the patient's right to add a statement of disagreement and to have that statement sent to previous recipients of the disputed health care information.

History: En. Sec. 15, Ch. 632, L. 1987.

50-16-544. Procedure for adding correction, amendment, or statement of disagreement. (1) In making a correction or amendment, the health care provider shall:

(a) add the amending information as a part of the health record; and

(b) mark the challenged entries as corrected or amended entries and indicate the place in the record where the corrected or amended information is located, in a manner practicable under the circumstances.

(2) If the health care provider maintaining the record of the patient's health care information refuses to make the patient's proposed correction or amendment, the provider shall:

(a) permit the patient to file as a part of the record of his health care information a concise statement of the correction or amendment requested and the reasons therefor; and

(b) mark the challenged entry to indicate that the patient claims the entry is inaccurate or incomplete and indicate the place in the record where the statement of disagreement is located, in a manner practicable under the circumstances.

History: En. Sec. 16, Ch. 632, L. 1987.

50-16-545. Dissemination of corrected or amended information or statement of disagreement. (1) A health care provider, upon request of a patient, shall take reasonable steps to provide copies of corrected or amended information or of a statement of disagreement to all persons designated by the patient and identified in the health care information as having examined or received copies of the information sought to be corrected or amended.

(2) A health care provider may charge the patient a reasonable fee, not exceeding the fee provided for in 50-16-540, for distributing corrected or amended information or the statement of disagreement, unless the provider's error necessitated the correction or amendment.

History: En. Sec. 17, Ch. 632, L. 1987; amd. Sec. 6, Ch. 300, L. 1999.

50-16-546 through 50-16-550 reserved.

50-16-551. Criminal penalty. (1) A person who by means of bribery, theft, or misrepresentation of identity, purpose of use, or entitlement to the information examines or obtains, in violation of this part, health care information maintained by a health care provider is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding $10,000 or imprisonment for a period not exceeding 1 year, or both.

(2) A person who, knowing that a certification under 50-16-536(2) or a disclosure authorization under 50-16-526 and 50-16-527 is false, purposely presents the certification or disclosure authorization to a health care provider is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding $10,000 or imprisonment for a period not exceeding 1 year, or both.

History: En. Sec. 23, Ch. 632, L. 1987.

Cross-References

Government health care information -- penalty, 50-16-611.

Unauthorized divulgence of serological test information, 50-19-108.

50-16-552. Civil enforcement. The attorney general or appropriate county attorney may maintain a civil action to enforce this part. The court may order any relief authorized by 50-16-553.

History: En. Sec. 24, Ch. 632, L. 1987.

50-16-553. Civil remedies. (1) A person aggrieved by a violation of this part may maintain an action for relief as provided in this section.

(2) The court may order the health care provider or other person to comply with this part and may order any other appropriate relief.

(3) A health care provider who relies in good faith upon a certification pursuant to 50-16-536(2) is not liable for disclosures made in reliance on that certification.

(4) No disciplinary or punitive action may be taken against a health care provider or his employee or agent who brings evidence of a violation of this part to the attention of the patient or an appropriate authority.

(5) In an action by a patient alleging that health care information was improperly withheld under 50-16-541 and 50-16-542, the burden of proof is on the health care provider to establish that the information was properly withheld.

(6) If the court determines that there is a violation of this part, the aggrieved person is entitled to recover damages for pecuniary losses sustained as a result of the violation and, in addition, if the violation results from willful or grossly negligent conduct, the aggrieved person may recover not in excess of $5,000, exclusive of any pecuniary loss.

(7) If a plaintiff prevails, the court may assess reasonable attorney fees and all other expenses reasonably incurred in the litigation.

(8) An action under this part is barred unless the action is commenced within 3 years after the cause of action accrues.

History: En. Sec. 25, Ch. 632, L. 1987.

Part Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Part 6
Government Health Care Information

50-16-601. Short title. This part may be cited as the "Government Health Care Information Act".

History: En. Sec. 1, Ch. 481, L. 1989.

50-16-602. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) (a) "Health care information" means information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of an individual, including one who is deceased, and that relates to that individual's health care or status. The term includes any record of disclosures of health care information and any information about an individual received pursuant to state law or rules relating to communicable disease.

(b) The term does not include vital statistics information gathered under Title 50, chapter 15.

(3) "Local board" means a county, city, city-county, or district board of health provided for in Title 50, chapter 2, part 1.

(4) "Local health officer" means a county, city, city-county, or district health officer appointed by a local board.

History: En. Sec. 2, Ch. 481, L. 1989; amd. Sec. 109, Ch. 418, L. 1995; amd. Sec. 286, Ch. 546, L. 1995.

Cross-References

Uniform health care information -- definition of health care information, 50-16-504.

50-16-603. Confidentiality of health care information. Health care information in the possession of the department, a local board, a local health officer, or the entity's authorized representatives may not be released except:

(1) for statistical purposes, if no identification of individuals can be made from the information released;

(2) when the health care information pertains to a person who has given written consent to the release and has specified the type of information to be released and the person or entity to whom it may be released;

(3) to medical personnel in a medical emergency as necessary to protect the health, life, or well-being of the named person;

(4) as allowed by Title 50, chapters 17 and 18;

(5) to another state or local public health agency, including those in other states, whenever necessary to continue health services to the named person or to undertake public health efforts to prevent or interrupt the transmission of a communicable disease or to alleviate and prevent injury caused by the release of biological, chemical, or radiological agents capable of causing imminent disability, death, or infection;

(6) in the case of a minor, as required by 41-3-201 or pursuant to an investigation under 41-3-202 or if the health care information is to be presented as evidence in a court proceeding involving child abuse pursuant to Title 41, chapter 3. Documents containing the information must be sealed by the court upon conclusion of the proceedings.

(7) to medical personnel, the department, a local health officer or board, or a district court when necessary to implement or enforce state statutes or state or local health rules concerning the prevention or control of diseases designated as reportable pursuant to 50-1-202, if the release does not conflict with any other provision contained in this part.

History: En. Sec. 3, Ch. 481, L. 1989; amd. Sec. 10, Ch. 391, L. 2003; amd. Sec. 26, Ch. 504, L. 2003.

Cross-References

Uniform health care information, Title 50, ch. 16, part 5.

50-16-604. Secondary release of health care information. Information released pursuant to 50-16-603 may not be released by the person or entity it is released to unless the release conforms to the requirements of 50-16-603.

History: En. Sec. 4, Ch. 481, L. 1989.

50-16-605. Judicial, legislative, and administrative proceedings -- testimony. (1) An officer or employee of the department may not be examined in a judicial, legislative, administrative, or other proceeding about the existence or content of records containing individually identifiable health care information, including the results of investigations, unless all individuals whose names appear in the records give written consent to the release of information identifying them.

(2) Subsection (1) does not apply if the health care information is to be released pursuant to 50-16-603(6) and (7).

History: En. Sec. 5, Ch. 481, L. 1989; amd. Sec. 27, Ch. 504, L. 2003.

Cross-References

Uniform health care information -- when available by compulsory process, 50-16-535.

50-16-606. Correlation with Uniform Health Care Information Act. Health care information in the possession of a local board, local health officer, or the department because a health care provider employed by any of these entities provided health care to a patient, either individually or at a public health center or other publicly owned health care facility, is subject to the Uniform Health Care Information Act and not subject to this part.

History: En. Sec. 1, Ch. 432, L. 1991.

Cross-References

Uniform Health Care Information Act, Title 50, ch. 16, part 5.

50-16-607 through 50-16-610 reserved.

50-16-611. Penalty. A person who knowingly violates the provisions of this part is guilty of a misdemeanor and upon conviction shall be fined not less than $500 or more than $10,000, be imprisoned in the county jail not less than 3 months or more than 1 year, or both.

History: En. Sec. 6, Ch. 481, L. 1989.

Cross-References

Uniform health care information -- criminal penalty, 50-16-551.

Part Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Duty to report cases of communicable disease, 37-2-301.

Duty to report cases of sexually transmitted diseases, 50-18-106.

Part 7
Report of Exposure to Infectious Disease

50-16-701. Definitions. As used in this part, the following definitions apply:

(1) "Airborne infectious disease" means an infectious disease transmitted from person to person by an aerosol, including but not limited to infectious tuberculosis.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Designated officer" means the emergency services organization's representative and the alternate whose names are on record with the department as the persons responsible for notifying an emergency services provider of exposure.

(4) "Emergency services organization" means a public or private organization that provides emergency services to the public.

(5) "Emergency services provider" means a person employed by or acting as a volunteer with an emergency services organization, including but not limited to a law enforcement officer, firefighter, emergency medical technician, paramedic, corrections officer, or ambulance service attendant.

(6) "Exposure" means the subjecting of a person to a risk of transmission of an infectious disease through the commingling of the blood or bodily fluids of the person and a patient or in another manner as defined by department rule.

(7) "Health care facility" has the meaning provided in 50-5-101 and includes a public health center as defined in 7-34-2102.

(8) "Infectious disease" means human immunodeficiency virus infection, hepatitis B, hepatitis C, hepatitis D, communicable pulmonary tuberculosis, meningococcal meningitis, and any other disease capable of being transmitted through an exposure that has been designated by department rule.

(9) "Infectious disease control officer" means the person designated by the health care facility as the person who is responsible for notifying the emergency services provider's designated officer and the department of an infectious disease as provided for in this part and by rule.

(10) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

History: En. Sec. 1, Ch. 390, L. 1989; amd. Sec. 1, Ch. 476, L. 1993; amd. Sec. 110, Ch. 418, L. 1995; amd. Sec. 287, Ch. 546, L. 1995; amd. Sec. 13, Ch. 93, L. 1997; amd. Sec. 1, Ch. 146, L. 1999.

50-16-702. Notification of exposure to infectious disease -- report of exposure to disease. (1) (a) If an emergency services provider acting in an official capacity attends a patient prior to or during transport or assists in transporting a patient to a health care facility and the emergency services provider has had an exposure, the emergency services provider may request the designated officer to submit the form required by department rule to the health care facility on the emergency services provider's behalf. The form must be provided for in rules adopted by the department and must include the emergency services provider's name and other information required by the department, including a description of the exposure. The designated officer shall submit the completed form to the health care facility receiving the patient as soon as possible after the request for submission by the emergency services provider. Submission of the form to the health care facility is an indication that the emergency services provider was exposed and a verification that the designated officer and the emergency services provider believe that the emergency services provider was exposed.

(b) If the exposure described on the form occurred in a manner that may allow infection by HIV, as defined in 50-16-1003, by a mode of transmission recognized by the centers for disease control and prevention, then submission of the form to the health care facility constitutes a request to the patient's physician to seek consent for performance of an HIV-related test pursuant to 50-16-1007(10).

(c) Upon receipt of the report of exposure from a designated officer, the health care facility shall notify the designated officer in writing whether or not a determination has been made that the patient has or does not have an infectious disease. If a determination has been made and the patient has been found:

(i) to have an infectious disease, the information required by 50-16-703 must be provided by the health care facility;

(ii) to not have an infectious disease, the date on which the patient was transported to the health care facility must be provided by the health care facility.

(2) If a health care facility receiving a patient determines that the patient has an airborne infectious disease, the health care facility shall, within 48 hours after the determination was made, notify the designated officer and the department of that fact. The notice to the department must include the name of the emergency services organization that transported the patient to the health care facility. The department shall, within 24 hours after receiving the notice, notify the designated officer of the emergency services provider who transported the patient.

(3) A designated officer who receives the notification from a health care facility required by 50-16-703(2) or by subsection (1)(c) of this section shall immediately provide the information contained in the notification to the emergency services provider for whom the report of exposure was filed or who was exposed to a patient with an airborne infectious disease.

History: En. Sec. 2, Ch. 390, L. 1989; amd. Sec. 7, Ch. 544, L. 1991; amd. Sec. 2, Ch. 476, L. 1993; amd. Sec. 2, Ch. 146, L. 1999.

50-16-703. Notification of precautions after exposure to infectious disease. (1) After a patient is transported to a health care facility and if a physician determines that the transported patient has an infectious disease, the physician shall inform the infectious disease control officer of the health care facility of the determination within 24 hours after the determination is made.

(2) If it is determined that the infectious disease is airborne or a report of exposure was filed concerning the patient under 50-16-702, the health care facility shall provide the notification required by subsection (3) orally within 48 hours after the time of diagnosis and in writing within 72 hours after diagnosis to the designated officer of each emergency services organization known to the health care facility to have provided emergency services to the patient prior to or during transportation to the health care facility.

(3) The notification must state the disease to which the emergency services provider was exposed, the appropriate medical precautions and treatment that the exposed person needs to take, the date on which the patient was transported to the health care facility, and the time that the patient arrived at the facility.

History: En. Sec. 3, Ch. 390, L. 1989; amd. Sec. 3, Ch. 476, L. 1993; amd. Sec. 3, Ch. 146, L. 1999.

50-16-704. Confidentiality -- penalty for violation -- immunity from liability. (1) The name of the person diagnosed as having an infectious disease may not be released to anyone, including the emergency services provider who was exposed, nor may the name of the emergency services provider who was exposed be released to anyone other than the emergency services provider, except as required by this part, by department rule concerning reporting of communicable disease, or as allowed by Title 50, chapter 16, part 5.

(2) A person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be fined not less than $500 or more than $10,000, be imprisoned in the county jail not less than 3 months or more than 1 year, or both.

(3) A health care facility, a representative of a health care facility, a physician, or the designated officer of an emergency services provider's organization may not be held jointly or severally liable for providing the notification required by 50-16-703 when the notification is made in good faith or for failing to provide the notification if good faith attempts to contact an exposed person of exposure are unsuccessful.

History: En. Sec. 5, Ch. 390, L. 1989; amd. Sec. 4, Ch. 476, L. 1993; amd. Sec. 4, Ch. 146, L. 1999.

Cross-References

Physician's immunity from liability, 37-2-312.

50-16-705. Rulemaking authority. The department shall adopt rules to:

(1) define what constitutes an exposure to an infectious disease;

(2) specify the infectious diseases subject to this part;

(3) specify the information about an exposure that must be included in a report of exposure;

(4) specify recommended medical precautions and treatment for each infectious disease subject to this part; and

(5) specify recordkeeping and reporting requirements necessary to ensure compliance with the notification requirements of this part.

History: En. Sec. 4, Ch. 390, L. 1989; amd. Sec. 5, Ch. 476, L. 1993; amd. Sec. 5, Ch. 146, L. 1999.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-16-706 through 50-16-710 reserved.

50-16-711. Health care facility and emergency services organization responsibilities for tracking exposure to infectious disease. (1) The health care facility and the emergency services organization shall develop internal procedures for implementing the provisions of this part and department rules.

(2) The health care facility must have available at all times a person to receive the form provided for in 50-16-702 containing a report of exposure to infectious disease.

(3) The health care facility shall designate an infectious disease control officer and an alternate who will be responsible for maintaining the required records and notifying designated officers in accordance with the provisions of this part and the rules promulgated under this part and shall provide the names of the designated officer and the alternate to the department.

(4) The emergency services organization shall name a designated officer and an alternate and shall provide their names to the department.

History: En. Sec. 7, Ch. 476, L. 1993; amd. Sec. 6, Ch. 146, L. 1999.

50-16-712. Notification to mortuary personnel -- exposure to infectious disease. (1) A coroner, a health care facility, or a health care provider, as defined in 50-16-1003, shall disclose information regarding the status of a deceased individual with regard to an infectious disease to personnel from a mortuary licensed under Title 37, chapter 19, at the time of transfer of the dead body or as soon after transfer as possible. The information must include whether the individual had an infectious disease at the time of death and the nature of the infectious disease.

(2) The mortuary personnel who receive the information provided in subsection (1) may not disclose the information except for purposes related directly to the preparation and disposition of the dead body.

History: En. Sec. 1, Ch. 396, L. 1995.

Part 8
Health Care information Privacy Requirements for Providers Subject to HIPAA

50-16-801. Legislative findings. The legislature finds that:

(1) health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy and health care or other interests;

(2) the enactment of federal health care privacy legislation and the adoption of rules pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d, et seq., provide significant privacy protection for health care information with respect to health care providers subject to HIPAA;

(3) for health care providers subject to the health care information privacy protections of HIPAA, the applicability of the provisions of Title 50, chapter 16, part 5, relating to health care privacy is unnecessary and may result in significant practical difficulties;

(4) it is in the best interest of the citizens of Montana to have certain requirements, with respect to the use or release of health care information by health care providers, that are more restrictive than or additional to the health care privacy protections of HIPAA.

History: En. Sec. 15, Ch. 396, L. 2003.

50-16-802. Applicability. This part applies only to health care providers subject to the health care information privacy protections of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d, et seq., and administrative rules adopted in connection with HIPAA.

History: En. Sec. 16, Ch. 396, L. 2003.

50-16-803. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Health care" means care, services, or supplies provided by a health care provider that are related to the health of an individual. Health care includes but is not limited to the following:

(a) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care and counseling, service, assessment, or procedure with respect to an individual's physical or mental condition; or

(b) the sale or dispensing of any drug, device, equipment, or other item in accordance with a prescription.

(2) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(3) "Health care information" means any information, whether oral or recorded in any form or medium, that:

(a) is created or received by a health care provider;

(b) relates to the past, present, or future physical or mental health or condition of an individual or to the past, present, or future payment for the provision of health care to the individual; and

(c) identifies or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

(4) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

(5) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

(7) "Reasonable fee" means the charge, as provided for in 50-16-816, for duplicating, searching for, or handling recorded health care information.

History: En. Sec. 17, Ch. 396, L. 2003.

50-16-804. Representative of deceased patient's estate. A personal representative of a deceased patient's estate may exercise all of the deceased patient's rights under this part. If there is no personal representative or upon discharge of the personal representative, a deceased patient's rights under this part may be exercised by the surviving spouse, a parent, an adult child, an adult sibling, or any other person who is authorized by law to act for the deceased person.

History: En. Sec. 18, Ch. 396, L. 2003.

50-16-805. Disclosure of information for workers' compensation and occupational disease claims and law enforcement purposes. (1) To the extent provided in 39-71-604 and 50-16-527, a signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, by the health care provider.

(2) A health care provider may disclose health care information about an individual for law enforcement purposes if the disclosure is to:

(a) federal, state, or local law enforcement authorities to the extent required by law; or

(b) a law enforcement officer about the general physical condition of a patient being treated in a health care facility if the patient was injured by the possible criminal act of another.

History: En. Sec. 19, Ch. 396, L. 2003.

50-16-806 through 50-16-810 reserved.

50-16-811. When health care information available by compulsory process. (1) Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

(a) the patient has authorized in writing the release of the health care information in response to compulsory process or a discovery request;

(b) the patient has waived the right to claim confidentiality for the health care information sought;

(c) the patient is a party to the proceeding and has placed the patient's physical or mental condition in issue;

(d) the patient's physical or mental condition is relevant to the execution or witnessing of a will or other document;

(e) the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;

(f) a patient's health care information is to be used in the patient's commitment proceeding;

(g) the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so obtained may not be used in any proceeding against the patient unless the matter relates to payment for the patient's health care or unless authorized under subsection (1)(i);

(h) a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest; or

(i) the health care information is requested pursuant to an investigative subpoena issued under 46-4-301 or similar federal law.

(2) This part does not authorize the disclosure of health care information by compulsory legal process or discovery in any judicial, legislative, or administrative proceeding where disclosure is otherwise prohibited by law.

History: En. Sec. 20, Ch. 396, L. 2003.

50-16-812. Method of compulsory process. (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under 50-16-811(1)(b), (1)(d), or (1)(e) or in a civil proceeding or investigation under 50-16-811(1)(h), the person seeking compulsory process or discovery shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) of this section to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or by the person's authorized representative, identifying at least one subsection of 50-16-811 under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under 50-16-811(1)(b), (1)(d), or (1)(e) or in a civil proceeding under 50-16-811(1)(h), that the requirements of subsection (1) of this section for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of 50-16-811 identified in the certification provides an appropriate basis for the use of compulsory process or discovery. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

(3) In response to service of compulsory process or discovery requests, when authorized by law, a health care provider may deny access to the requested health care information. If access to requested health care information is denied by the health care provider, the health care provider shall submit to the court by affidavit or other reasonable means an explanation of why the health care provider believes that the information should be protected from disclosure.

(4) When access to health care information is denied, the court may order disclosure of health care information, with or without restrictions as to its use, as the court considers necessary. In deciding whether to order disclosure, the court shall consider the explanation submitted by the health care provider and any arguments presented by interested parties.

(5) A health care provider required to disclose health care information pursuant to compulsory process may charge a reasonable fee, not to exceed the fee provided for in 50-16-816, and may deny examination or copying of the information until the fee is paid.

(6) Production of health care information under 50-16-811 and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure.

History: En. Sec. 21, Ch. 396, L. 2003.

50-16-813 through 50-16-815 reserved.

50-16-816. Reasonable fees. Unless prohibited by federal law, a reasonable fee for providing copies of health care information may not exceed 50 cents for each page for a paper copy or photocopy. A reasonable fee may include an administrative fee that may not exceed $15 for searching and handling recorded health care information.

History: En. Sec. 22, Ch. 396, L. 2003.

50-16-817. Civil remedies. (1) A person aggrieved by a violation of this part may maintain an action for relief as provided in this section.

(2) The court may order the health care provider or other person to comply with this part and may order any other appropriate relief.

(3) A disciplinary or punitive action may not be taken against a health care provider or the provider's employee or agent who brings evidence of a violation of this part to the attention of the patient or an appropriate authority.

(4) If the court determines that there is a violation of this part, the aggrieved person is entitled to recover damages for pecuniary losses sustained as a result of the violation and, in addition, if the violation results from willful or grossly negligent conduct, the aggrieved person may recover not in excess of $5,000, exclusive of any pecuniary loss.

(5) If a plaintiff prevails, the court may assess reasonable attorney fees and all other expenses reasonably incurred in the litigation.

(6) An action under this part is barred unless the action is commenced within 3 years after the cause of action accrues.

(7) A health care provider who relies in good faith upon certification pursuant to 50-16-812 is considered to have received reasonable assurances and is not liable for disclosures made in reliance on that certification.

History: En. Sec. 23, Ch. 396, L. 2003.

50-16-818. Good faith. A person authorized to act as a health care representative for an individual with respect to the individual's health care information shall act in good faith to represent the best interests of the individual.

History: En. Sec. 24, Ch. 396, L. 2003.

Part Cross-References

Right of privacy guaranteed, Art. II, sec. 10, Mont. Const.

Uniform health care information, Title 50, ch. 16, part 5.

Part 9 Reserved

Part 10
AIDS Education and Prevention

50-16-1001. Short title. This part may be cited as the "AIDS Prevention Act".

History: En. Sec. 1, Ch. 614, L. 1989.

50-16-1002. Statement of purpose. (1) The legislature recognizes that the epidemic of human immunodeficiency virus (HIV) infection, the causative agent of acquired immune deficiency syndrome (AIDS), and related medical conditions constitutes a serious danger to the public health and welfare. In the absence of a vaccine or a cure and because of the sexual and intravenous drug use behaviors by which the virus is predominately spread, control of the epidemic is dependent on the education of those infected or at risk for infection.

(2) It is the intent of the legislature that education directed at preventing the transmission of HIV be provided to those infected and at risk of infection and to entreat such persons to come forward to determine their HIV infection status and to obtain appropriate education.

History: En. Sec. 2, Ch. 614, L. 1989.

50-16-1003. Definitions. As used in this part, the following definitions apply:

(1) "AIDS" means acquired immune deficiency syndrome as further defined by the department in accordance with standards promulgated by the centers for disease control of the United States public health service.

(2) "Contact" means a person who has been exposed to the test subject in a manner, voluntary or involuntary, that may allow HIV transmission in accordance with modes of transmission recognized by the centers for disease control of the United States public health service.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Health care facility" means a health care institution, private or public, including but not limited to a hospital, nursing home, clinic, blood bank, blood center, sperm bank, or laboratory.

(5) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state or who is licensed, certified, or otherwise authorized by the laws of another state to provide health care in the ordinary course of business or practice of a profession. The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.

(6) "HIV" means the human immunodeficiency virus, identified as the causative agent of AIDS, and all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological systems and leave the infected person immunodeficient or neurologically impaired.

(7) "HIV-related condition" means a chronic disease resulting from infection with HIV, including but not limited to AIDS and asymptomatic seropositivity for HIV.

(8) "HIV-related test" means a test approved by the federal food and drug administration, including but not limited to an enzyme immunoassay and a western blot, that is designed to detect the presence of HIV or antibodies to HIV.

(9) "Informed consent" means a freely executed oral or written grant of permission by the subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject of the test is unconscious or otherwise mentally incapacitated, by the subject's next of kin or significant other or a person designated by the subject in hospital records to act on the person's behalf to perform an HIV-related test after the receipt of pretest counseling.

(10) "Legal guardian" means a person appointed by a court to assume legal authority for another who has been found incapacitated or, in the case of a minor, a person who has legal custody of the minor.

(11) "Local board" means a county, city, city-county, or district board of health.

(12) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

(13) "Next of kin" means an individual who is a parent, adult child, grandparent, adult sibling, or legal spouse of a person.

(14) "Person" means an individual, corporation, organization, or other legal entity.

(15) "Posttest counseling" means counseling, conducted at the time that the HIV-related test results are given, and includes, at a minimum, written materials provided by the department.

(16) "Pretest counseling" means the provision of counseling to the subject prior to conduct of an HIV-related test, including, at a minimum, written materials developed and provided by the department.

(17) "Release of test results" means a written authorization for disclosure of HIV-related test results that:

(a) is signed and dated by the person tested or the person authorized to act for the person tested; and

(b) specifies the nature of the information to be disclosed and to whom disclosure is authorized.

(18) "Significant other" means an individual living in a current spousal relationship with another individual but who is not legally a spouse of that individual.

History: En. Sec. 3, Ch. 614, L. 1989; amd. Sec. 1, Ch. 544, L. 1991; amd. Sec. 111, Ch. 418, L. 1995; amd. Sec. 288, Ch. 546, L. 1995; amd. Sec. 1, Ch. 197, L. 1997; amd. Sec. 2, Ch. 524, L. 1997.

50-16-1004. AIDS, HIV-related conditions, and HIV infection to be treated as other communicable diseases. It is the intent of the legislature to treat AIDS, HIV-related conditions, and HIV infection in the same manner as other communicable diseases, including sexually transmitted diseases, by adopting the most currently accepted public health practices with regard to testing, reporting, partner notification, and disease intervention. Nothing in this section is intended to prohibit the department from allowing testing for HIV infection to be performed and reported without identification of the subject of the test. The department shall adopt rules, as provided in 50-1-202, to reflect this policy.

History: En. Sec. 1, Ch. 524, L. 1997.

Cross-References

Disclosure of communicable diseases, 50-16-603.

Sexually transmitted diseases, Title 50, ch. 18.

50-16-1005 and 50-16-1006 reserved.

50-16-1007. Testing -- counseling -- informed consent -- penalty. (1) An HIV-related test may be ordered only by a health care provider and only after receiving the informed consent of:

(a) the subject of the test;

(b) the subject's legal guardian;

(c) the subject's next of kin or significant other if:

(i) the subject is unconscious or otherwise mentally incapacitated;

(ii) there is no legal guardian;

(iii) there are medical indications of an HIV-related condition; and

(iv) the test is advisable in order to determine the proper course of treatment of the subject; or

(d) the subject's next of kin or significant other or the person, if any, designated by the subject in hospital records to act on the subject's behalf if:

(i) the subject is in a hospital; and

(ii) the circumstances in subsections (1)(c)(i) through (1)(c)(iv) exist.

(2) When a health care provider orders an HIV-related test, the provider also certifies that informed consent has been received prior to ordering an HIV-related test.

(3) Before the subject of the test gives informed consent, the health care provider ordering the test or the provider's designee shall give pretest counseling to:

(a) the subject;

(b) the subject's legal guardian;

(c) the subject's next of kin or significant other if:

(i) the subject is unconscious or otherwise mentally incapacitated; and

(ii) there is no guardian; or

(d) the subject's next of kin or significant other or the person, if any, designated by the subject in hospital records to act on the subject's behalf if:

(i) the subject is in the hospital; and

(ii) the circumstances in subsections (1)(c)(i) and (1)(c)(ii) exist.

(4) A health care provider who does not provide HIV-related tests on an anonymous basis shall inform each person who wishes to be tested that anonymous testing is available at one of the counseling-testing sites established by the department, or elsewhere.

(5) The subject of an HIV-related test or any of the subject's representatives authorized by subsection (1) to act in the subject's stead shall designate, after giving informed consent, a health care provider to receive the results of an HIV-related test. The designated health care provider shall inform the subject or the subject's representative of the results in person.

(6) At the time that the subject of a test or the subject's representative is given the test results, the health care provider or the provider's designee shall give the subject or the subject's representative posttest counseling.

(7) If a test is performed as part of an application for insurance, the insurance company shall obtain the informed consent in writing and ensure that:

(a) negative results can be obtained by the subject or the subject's representative upon request; and

(b) positive results are returned to the health care provider designated by the subject or the subject's representative.

(8) A minor may consent or refuse to consent to be the subject of an HIV-related test, pursuant to 41-1-402.

(9) Subsections (1) through (6) do not apply to:

(a) the performance of an HIV-related test by a health care provider or health care facility that procures, processes, distributes, or uses a human body part donated for a purpose specified under Title 72, chapter 17, if the test is necessary to assure medical acceptability of the gift for the purposes intended;

(b) the performance of an HIV-related test for the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher;

(c) the performance of an HIV-related test when:

(i) the subject of the test is unconscious or otherwise mentally incapacitated;

(ii) there are medical indications of an HIV-related condition;

(iii) the test is advisable in order to determine the proper course of treatment of the subject; and

(iv) none of the individuals listed in subsection (1)(b), (1)(c), or (1)(d) exists or is available within a reasonable time after the test is determined to be advisable; or

(d) the performance of an HIV-related test conducted pursuant to 50-18-107 or 50-18-108, with the exception that the pretest and posttest counseling must still be given.

(10) (a) If an agent or employee of a health care facility, a health care provider with privileges at the health care facility, or a person providing emergency services who is described in 50-16-702 has been voluntarily or involuntarily exposed to a patient in a manner that may allow infection by HIV by a mode of transmission recognized by the centers for disease control of the United States public health service, the physician of the patient shall, upon request of the exposed person, notify the patient of the exposure and seek informed consent in accordance with guidelines of the centers for disease control for an HIV-related test of the patient. If informed consent cannot be obtained, the health care facility, in accordance with the infectious disease exposure guidelines of the health care facility, may, without the consent of the patient, conduct the test on previously drawn blood or previously collected bodily fluids to determine if the patient is in fact infected. A health care facility is not required to perform a test authorized in this subsection. If a test is conducted pursuant to this subsection, the health care facility shall inform the patient of the results and provide the patient with posttest counseling. The patient may not be charged for a test performed pursuant to this subsection. The results of a test performed pursuant to this subsection may not be made part of the patient's record and are subject to 50-16-1009(1).

(b) For the purposes of this subsection (10), "informed consent" means an agreement that is freely executed, either orally or in writing, by the subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject is incapacitated, by the subject's next of kin, significant other, or a person designated by the subject in hospital records to act on the subject's behalf.

(11) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of $1,000 or imprisonment for up to 6 months, or both.

History: En. Sec. 4, Ch. 614, L. 1989; amd. Sec. 2, Ch. 544, L. 1991; amd. Sec. 6, Ch. 476, L. 1993; amd. Sec. 3, Ch. 524, L. 1997.

50-16-1008. Testing of donors of organs, tissues, and semen required -- penalty. (1) Prior to donation of an organ, semen, or tissues, HIV-related testing of a prospective donor, in accordance with nationally accepted standards adopted by the department by rule, is required unless the transplantation of an indispensable organ is necessary to save a patient's life and there is not sufficient time to perform an HIV-related test.

(2) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of up to $1,000 or imprisonment of up to 6 months, or both.

History: En. Sec. 5, Ch. 614, L. 1989; amd. Sec. 3, Ch. 544, L. 1991.

Cross-References

Uniform Anatomical Gift Act, Title 72, ch. 17.

50-16-1009. Confidentiality of records -- notification of contacts -- penalty for unlawful disclosure. (1) A person may not disclose or be compelled to disclose the identity of a subject of an HIV-related test or the results of a test in a manner that permits identification of the subject of the test, except to the extent allowed under the Uniform Health Care Information Act, Title 50, chapter 16, part 5, the Government Health Care Information Act, Title 50, chapter 16, part 6, or applicable federal law.

(2) If a health care provider informs the subject of an HIV-related test that the results are positive, the provider shall encourage the subject to notify persons who are potential contacts. If the subject is unable or unwilling to notify all contacts, the health care provider may ask the subject to disclose voluntarily the identities of the contacts and to authorize notification of those contacts by a health care provider. A notification may state only that the contact may have been exposed to HIV and may not include the time or place of possible exposure or the identity of the subject of the test.

(3) A person who discloses or compels another to disclose confidential health care information in violation of this section is guilty of a misdemeanor punishable by a fine of $1,000 or imprisonment for 1 year, or both.

History: En. Sec. 6, Ch. 614, L. 1989; amd. Sec. 4, Ch. 544, L. 1991; amd. Sec. 10, Ch. 396, L. 2003.

50-16-1010 through 50-16-1012 reserved.

50-16-1013. Civil remedy. (1) A person aggrieved by a violation of this part has a right of action in the district court and may recover for each violation:

(a) against a person who negligently violates a provision of this part, damages of $5,000 or actual damages, whichever is greater;

(b) against a person who intentionally or recklessly violates a provision of this part, damages of $20,000 or actual damages, whichever is greater;

(c) reasonable attorney fees; and

(d) other appropriate relief, including injunctive relief.

(2) An action under this section must be commenced within 3 years after the cause of action accrues.

(3) The department may maintain a civil action to enforce this part in which the court may order any relief permitted under subsection (1).

(4) Nothing in this section limits the rights of a subject of an HIV-related test to recover damages or other relief under any other applicable law or cause of action.

(5) Nothing in this part may be construed to impose civil liability or criminal sanctions for disclosure of an HIV-related test result in accordance with any reporting requirement for a diagnosed case of AIDS or an HIV-related condition by the department or the centers for disease control of the United States public health service.

History: En. Sec. 7, Ch. 614, L. 1989; amd. Sec. 5, Ch. 544, L. 1991.

Cross-References

Statutes of limitations, Title 27, ch. 2.

Injunctions, Title 27, ch. 19.

CHAPTER 31
MONTANA FOOD, DRUG, AND COSMETIC ACT

Part 1 -- General Provisions

50-31-101. Short title.
50-31-102. Applicability of chapter.
50-31-103. Definitions.
50-31-104. Department authorized to adopt rules.
50-31-105. Publication of information by department.
50-31-106. Inspections and taking of samples authorized.
50-31-107. False or misleading representations.
50-31-108. Regulations concerning additives.
50-31-109. Use of additives.
50-31-110. Certain agricultural chemicals not color additives.
50-31-111. When labeling requirement complied with.

Part 2 -- Food and Bottled Water

50-31-201. Department authorized to adopt food standards.
50-31-202. When food adulterated.
50-31-203. When food misbranded.
50-31-204. Labeling requirements for products in semblance of honey or containing honey.
50-31-205. Repealed.
50-31-206. Repealed.
50-31-207. Repealed.
50-31-208. Sale of hamburger and beef patty mix.
50-31-209 through 50-31-220 reserved.
50-31-221. Repealed.
50-31-222. Repealed.
50-31-223. Repealed.
50-31-224 through 50-31-230 reserved.

50-31-231. Repealed.
50-31-232 through 50-31-235 reserved.
50-31-236. Repealed.
50-31-237. Health claims for bottled water.
50-31-238. Repealed.

Part 3 -- Drugs and Devices

50-31-301. Definitions.
50-31-302. Antiseptics considered to be germicides.
50-31-303. Certain drug advertisements considered false.
50-31-304. Certain drugs and devices exempt from labeling requirements of chapter.
50-31-305. When drug or device adulterated.
50-31-306. When drug or device misbranded.
50-31-307. Dispensing of prescription drugs.
50-31-308. Prescription drugs exempt from certain provisions of chapter.
50-31-309. Removal of drugs from prescription requirement.
50-31-310. Narcotic and marijuana laws not affected.
50-31-311. New drug application required.
50-31-312. Exemptions from new drug application requirement.
50-31-313. Code imprint required on legend drugs.
50-31-314. Exemptions from code imprint requirement.
50-31-315. List of code imprints to be provided.

Part 4 -- Cosmetics

50-31-401. When cosmetic adulterated.
50-31-402. When cosmetic misbranded.
50-31-403. Exceptions for hair dyes.
50-31-404. Term hair dye not to include eyelash or eyebrow dyes.

Part 5 -- Prohibited Acts, Penalties, and Remedies

50-31-501. Prohibited acts.
50-31-502. Unlawful labeling of products resembling honey.
50-31-503. Prosecution of minor violations not required.
50-31-504. Notice and hearing required prior to prosecution.
50-31-505. Duty of state or county attorneys to prosecute.
50-31-506. Penalties.
50-31-507. Exceptions to penalties.
50-31-508. Injunction to restrain prohibited acts.
50-31-509. Detainer of adulterated or misbranded articles.
50-31-510. Condemnation of perishables.

Chapter Cross-References

Control of food and other commodities during emergency, 10-3-505.

Warranty provisions under Uniform Commercial Code, 30-2-312 through 30-2-318.

Weights, measures, standards, and labeling, Title 30, ch. 12.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Regulation of standards and sale of grain, seed, commercial feeds, and fertilizer -- regulation of produce -- inspection, grading, and packing of apples, Title 80, ch. 3 through 5, 9, 10.

Montana quality labels -- regulation of poultry, eggs, and egg dealers -- regulation of manufactured dairy products, Title 81, ch. 8, 20, 22.

Part 1
General Provisions

50-31-101. Short title. This chapter may be cited as the "Montana Food, Drug, and Cosmetic Act".

History: En. Sec. 1, Ch. 307, L. 1967; R.C.M. 1947, 27-701.

50-31-102. Applicability of chapter. The provisions of this chapter regarding the selling of food, drugs, devices, or cosmetics shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of these articles for sale; the sale, dispensing, and giving of these articles; and the supplying or applying of these articles in the conduct of a food, drug, or cosmetic establishment.

History: En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; R.C.M. 1947, 27-702(q).

50-31-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advertisement" means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing or that are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(2) "Beef patty mix" means "hamburger" or "ground beef" to which have been added binders or extenders as those terms are understood by general custom and usage in the food industry.

(3) "Bottled water" means water that is intended for human consumption and that is sealed in bottles or other containers with no added ingredients, except that it may optionally contain safe and suitable antimicrobial agents.

(4) "Color" includes black, white, and intermediate grays.

(5) (a) "Color additive" means a material that:

(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or that is extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

(ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or through reaction with another substance) of imparting color to the human body.

(b) The term does not include material that has been or is exempted under the federal act.

(6) (a) "Consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and regulations pursuant to the federal act.

(b) The term does not include:

(i) any tobacco or tobacco product;

(ii) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136, et seq.) or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151 through 157), commonly known as the Virus-Serum-Toxin Act;

(iii) a drug subject to 50-31-306(1)(m) or 50-31-307(2)(c) or section 503(b)(1) or 506 of the federal act (21 U.S.C. 353(b)(1) and 356);

(iv) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. 201, et seq.); or

(v) a commodity subject to the Federal Seed Act (7 U.S.C. 1551 through 1610).

(7) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, foreign or injurious contaminations.

(8) "Cosmetic" means:

(a) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(b) articles intended for use as a component of these articles, except that the term does not include soap.

(9) "Counterfeit drug" means a drug, drug container, or drug label that, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug and that falsely purports or is represented to be the product of or to have been packed or distributed by the other drug manufacturer, processor, packer, or distributor.

(10) "Department" means the department of public health and human services provided for in 2-15-2201.

(11) "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3), and 50-31-501(10)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; or

(b) to affect the structure or function of the body of humans or other animals.

(12) "Dietary supplement" means a product, other than a tobacco product, that is intended to supplement the diet and that:

(a) is advertised only as a food supplement;

(b) bears or contains one or more of the following ingredients:

(i) a vitamin;

(ii) a mineral;

(iii) an herb or other botanical substance;

(iv) an amino acid;

(v) a dietary substance used to supplement the diet by increasing the total dietary intake or a concentrate, metabolite, constituent, extract, or combination of any ingredients described in subsections (12)(b)(i) through (12)(b)(iv);

(c) conforms to any additional provisions for the definition of dietary supplement under 21 U.S.C. 321.

(13) "Drug" means:

(a) articles recognized in the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these;

(b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals;

(c) articles (other than food) intended to affect the structure or function of the body of humans or other animals;

(d) articles intended for use as components of any article specified in subsection (13)(a), (13)(b), or (13)(c) but does not include devices or their components, parts, or accessories.

(14) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301, et seq.).

(15) "Food" means:

(a) articles used for food or drink for humans or other animals;

(b) chewing gum;

(c) articles used for components of these articles; and

(d) dietary supplements.

(16) (a) "Food additive" means a substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and including a source of radiation intended for this use), if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use.

(b) The term does not include:

(i) a pesticide chemical in or on a raw agricultural commodity;

(ii) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity;

(iii) a color additive;

(iv) a substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act (21 U.S.C. 451, et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 603, et seq.).

(17) "Food service establishment" means a restaurant, catering vehicle, vending machine, delicatessen, fast-food retailer, or any other place that serves food at retail to the public for consumption, either at or away from the point of service, and any facility operated by a governmental entity where food is served.

(18) "Hamburger" or "ground beef" means ground fresh or frozen beef or a combination of both fresh and frozen beef, with or without the addition of suet, to which no water, binders, or extenders are added. There are four grades of hamburger or ground beef:

(a) "regular hamburger" or "regular ground beef" may have:

(i) a fat content no greater than the federal standard set forth in 9 CFR 319.15; and

(ii) a lean content of no less than 70%;

(b) "lean hamburger" or "lean ground beef" may have:

(i) a fat content no greater than 22%; and

(ii) a lean content of no less than 78%;

(c) "extra lean hamburger" or "extra lean ground beef" may have:

(i) a fat content no greater than 16%; and

(ii) a lean content of no less than 84%; and

(d) "super lean hamburger" or "super lean ground beef" may have:

(i) a fat content no greater than 12%; and

(ii) a lean content of no less than 88%.

(19) "Honey" means the nectar and saccharine plant exudations, gathered, modified, and stored in the comb by honey bees, that are levorotatory and that contain not more than 25% of water, not more than 0.25% of ash, and not more than 8% sucrose.

(20) "Label" means a display of written, printed, or graphic matter on the immediate container of an article. "Immediate container" does not include package liners.

(21) "Labeling" means labels and other written, printed, or graphic matter:

(a) on an article or its containers or wrappers;

(b) accompanying the article.

(22) "Menu" means a list presented to the patron that states the food items for sale in a food service establishment.

(23) "New drug" means a drug, the composition of which is such that:

(a) it is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling; or

(b) the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, has become so recognized but that has not, other than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

(24) "Official compendium" means the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these.

(25) (a) "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers.

(b) The term does not include:

(i) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

(ii) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

(26) "Person" includes an individual, partnership, corporation, and association.

(27) "Pesticide chemical" means a substance that alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136, et seq.), as amended, and that is used in the production, storage, or transportation of raw agricultural commodities.

(28) "Placard" means a nonpermanent sign used to display or describe food items for sale in a food service establishment or retail meat establishment.

(29) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(30) "Processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, freezing, or otherwise manufacturing a food or changing the physical characteristics of a food and the enclosure of the food in a package.

(31) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(32) "Retail meat establishment" means a commercial establishment at which meat or meat products are displayed for sale or provision to the public, with or without charge.

(33) "Synthetically compounded" means a product formulated by a process that chemically changes a material or substance extracted from naturally occurring plant, animal, or mineral sources, except for microbiological processes.

History: En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; R.C.M. 1947, 27-702(part); amd. Sec. 8, Ch. 37, L. 1979; amd. Sec. 1, Ch. 456, L. 1979; amd. Sec. 1, Ch. 361, L. 1981; amd. Sec. 1, Ch. 605, L. 1985; amd. Sec. 1, Ch. 169, L. 1989; amd. Sec. 4, Ch. 472, L. 1989; amd. Sec. 1, Ch. 133, L. 1991; amd. Sec. 129, Ch. 418, L. 1995; amd. Sec. 307, Ch. 546, L. 1995; amd. Sec. 210, Ch. 42, L. 1997; amd. Sec. 3, Ch. 172, L. 1999; amd. Sec. 1, Ch. 373, L. 2003.

50-31-104. Department authorized to adopt rules. (1) The department may adopt rules for the efficient enforcement of this chapter. The department may adopt by reference the regulations adopted by the food and drug administration under the federal act and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.).

(2) No hearing is required for adoption by reference of those regulations adopted under the federal act and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.).

History: En. Sec. 21, Ch. 307, L. 1967; amd. Sec. 3, Ch. 171, L. 1971; amd. Sec. 4, Ch. 349, L. 1974; R.C.M. 1947, 27-721.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-31-105. Publication of information by department. (1) The department may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof.

(2) The department may also cause to be disseminated such information regarding food, drugs, devices, and cosmetics as the department deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the department from collecting, reporting, and illustrating the results of the investigations of the department.

History: En. Sec. 23, Ch. 307, L. 1967; R.C.M. 1947, 27-723.

50-31-106. Inspections and taking of samples authorized. (1) The department or its authorized agents have free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into commerce or to any vehicle being used to transport or hold the foods, drugs, devices, or cosmetics in commerce, for the purpose of:

(a) inspecting the factory, warehouse, establishment, or vehicle to determine if any of the provisions of this chapter are being violated; and

(b) securing samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay for the sample.

(2) The department shall make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this chapter is being violated.

History: En. Sec. 22, Ch. 307, L. 1967; amd. Sec. 3, Ch. 187, L. 1977; R.C.M. 1947, 27-722.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

Refusal to allow entry or inspection prohibited, 50-31-501.

50-31-107. False or misleading representations. (1) An advertisement of a food, drug, device, or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(2) If an article is alleged to be misbranded because the labeling is misleading or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading there shall be taken into account not only representations made or suggested by statement, word, design, device, sound, or a combination of these but also the extent to which the labeling or advertisement fails to reveal facts material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement or under conditions of use as are customary or usual.

History: (1)En. Sec. 20, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 27-720, R.C.M. 1947; (2)En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; Sec. 27-702, R.C.M. 1947; R.C.M. 1947, 27-702(l), 27-720(a).

Cross-References

Freedom of speech and expression, Art. II, sec. 7, Mont. Const.

Specific drug advertisements considered false, 50-31-303.

50-31-108. Regulations concerning additives. (1) The department, upon its own motion or upon the petition of any interested party requesting that such a regulation be established, whenever public health or other considerations in the state so require, is authorized to adopt, amend, or repeal regulations, whether or not in accordance with regulations promulgated under the federal act, prescribing tolerances for any added poisonous or deleterious substances for food additives, for pesticide chemicals in or on raw agricultural commodities, or for color additives, including but not limited to zero tolerances and exemptions from tolerances in the case of pesticide chemicals in or on raw agricultural commodities and prescribing the conditions under which a food additive or a color additive may be safely used and exemptions where such food additive or color additive is to be used solely for investigational or experimental purposes.

(2) It shall be incumbent upon such petitioner to establish by data submitted to the department that a necessity exists for such regulation and that its effect will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the department to determine whether such regulation should be promulgated, the department may require additional data to be submitted and failure to comply with the request shall be sufficient grounds to deny the request.

(3) In adopting, amending, or repealing regulations relating to such substances the department shall consider among other relevant factors the following which the petitioner, if any, shall furnish:

(a) the name and all pertinent information concerning such substance including, where available, its chemical identity and composition, a statement of the conditions of the proposed use, including directions, recommendations, and suggestions and including specimens of proposed labeling, all relevant data bearing on the physical or other technical effect and the quantity required to produce such effect;

(b) the probable composition of or other relevant exposure from the article and of any substance formed in or on a food, drug, or cosmetic resulting from the use of such substance;

(c) the probable consumption of such substance in the diet of man and animals taking into account any chemically or pharmacologically related substance in such diet;

(d) safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of such substances for the use or uses for which they are proposed to be used, are generally recognized as appropriate for the use of animal experimentation data;

(e) the availability of any needed practicable methods of analysis for determining the identity and quantity of:

(i) such substance in or on an article;

(ii) any substance formed in or on such article because of the use of such substance; and

(iii) the pure substance and all intermediates and impurities; and

(f) facts supporting a contention that the proposed use of such substance will serve a useful purpose.

History: En. Sec. 13, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-713(b).

Cross-References

Misbranding drugs or devices, 50-31-306.

50-31-109. Use of additives. Any added poisonous or deleterious substance, any food additive, any pesticide chemical in or on a raw agricultural commodity, or any color additive shall, with respect to any particular use or intended use, be deemed unsafe for the purpose of application of 50-31-202(2) with respect to any food, 50-31-305(1) through (5) with respect to any drug or device, or 50-31-401(1) with respect to any cosmetic unless there is in effect a regulation pursuant to 50-31-108 limiting the quantity of such substance and the use or intended use of such substance conforms to the terms prescribed by such regulation. While such regulation relating to such substance is in effect, a food, drug, or cosmetic shall not by reason of bearing or containing such substance in

accordance with the regulation be considered adulterated within the meaning of 50-31-202(1), 50-31-305(1) through (5), or 50-31-401(1).

History: En. Sec. 13, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-713(a).

50-31-110. Certain agricultural chemicals not color additives. Subsections (4) and (5) of 50-31-103 do not apply to a pesticide chemical, soil or plant nutrient, or other agricultural chemical that affects the color of produce of the soil, whether before or after harvest, solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil.

History: En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; R.C.M. 1947, 27-702(u)(3); amd. Sec. 3, Ch. 361, L. 1981; amd. Sec. 5, Ch. 169, L. 1989; amd. Sec. 2, Ch. 373, L. 2003.

50-31-111. When labeling requirement complied with. A requirement made by or under authority of this chapter that a word, statement, or other information shall appear on the label is not complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article or is easily legible through the outside container or wrapper.

History: En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; R.C.M. 1947, 27-702(i)(part); amd. Sec. 9, Ch. 37, L. 1979.

Cross-References

Agricultural seed labeling, Title 80, ch. 5, part 1.

Part 2
Food and Bottled Water

Part Cross-References

Municipal power to inspect foodstuffs and regulate soft drink establishments, 7-21-4201, 7-21-4202.

Control of food and other commodities during emergency, 10-3-505.

Immunity of persons donating food for free distribution, 27-1-716.

Supervision and regulation of milk industry, Title 81, ch. 23, parts 1 through 4.

50-31-201. Department authorized to adopt food standards. (1) Whenever in the judgment of the department such action will promote honesty and fair dealing in the interest of consumers, the department shall promulgate regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, standard of quality, and/or fill of container.

(2) In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the department shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label.

(3) The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated under authority of the federal act, or the department may promulgate by reference the definitions and standards promulgated under authority of the federal act.

History: En. Sec. 9, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-709.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-31-202. When food adulterated. A food is considered to be adulterated if:

(1) it bears or contains any poisonous or deleterious substance that may render it injurious to health. If the poisonous or deleterious substance is not an added substance, the food may not be considered adulterated under this subsection if the quantity of the substance in that food does not ordinarily render it injurious to health.

(2) it bears or contains any added poisonous or added deleterious substance, other than one that is:

(a) a pesticide chemical in or on a raw agricultural commodity;

(b) a food additive; or

(c) a color additive that is unsafe within the meaning of 50-31-109;

(3) it is a raw agricultural commodity and it bears or contains a pesticide chemical that is unsafe within the meaning of section 408(a) of the federal act (21 U.S.C. 346a(a)), as amended;

(4) it is or it bears or contains any food additive that is unsafe within the meaning of section 409 of the federal act (21 U.S.C. 348) as amended. However, if a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under section 408 of the federal act (21 U.S.C. 346) and the raw agricultural commodity has been subjected to processing, such as canning, cooking, freezing, dehydrating, or milling, the residue of the pesticide chemical remaining in or on the processed food may, notwithstanding the provisions of 50-31-108, 50-31-109, and subsection (4) of this section, not be determined unsafe if the residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of the residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity.

(5) it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance or if it is otherwise unfit for food;

(6) it has been produced, prepared, packed, or held under unsanitary conditions under which it may have become contaminated with filth or under which it may have been rendered diseased, unwholesome, or injurious to health;

(7) it is the product of a diseased animal or an animal that has died otherwise than by slaughter or that has been fed upon the uncooked offal from a slaughterhouse;

(8) its container is composed in whole or in part of any poisonous or deleterious substance that may render the contents injurious to health;

(9) any valuable constituent has been in whole or in part omitted or abstracted from the food;

(10) any substance has been substituted wholly or in part for the food;

(11) damage or inferiority has been concealed in any manner;

(12) any substance has been added to the food or mixed or packed with the food so as to increase its bulk or weight, reduce its quality or strength, or make it appear better or of greater value than it is;

(13) it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of 0.4%, harmless natural wax not in excess of 0.4%, or harmless natural gum and pectin. However, this paragraph does not apply to any confectionery by reason of its containing less than 0.5% by volume of alcohol derived solely from the use of flavoring extracts or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances.

(14) it is or bears or contains any color additive that is unsafe within the meaning of the federal act.

History: En. Sec. 10, Ch. 307, L. 1967; R.C.M. 1947, 27-710; amd. Sec. 211, Ch. 42, L. 1997.

Cross-References

Deceptive business practices, 45-6-318.

Montana Pesticides Act, Title 80, ch. 8.

50-31-203. When food misbranded. A food is considered to be misbranded if:

(1) its labeling is false or misleading in any particular;

(2) it is offered for sale under the name of another food;

(3) it is an imitation of another food for which a definition and standard of identity has been prescribed by regulations as provided by 50-31-201 or if it is an imitation of another food that is not subject to subsection (7) of this section, unless its label bears in type of uniform size and prominence the word imitation and, immediately after that word, the name of the food imitated;

(4) its container is made, formed, or filled in a manner that is misleading;

(5) it is in package form, unless it bears a label containing:

(a) the name and place of business of the manufacturer, packer, or distributor;

(b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variations must be permitted and exemptions as to small packages must be established by regulations prescribed by the department;

(6) any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed on the label or labeling with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in terms that render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) it purports to be or is represented as a food for which a definition and standard of identity have been prescribed by regulations as provided by 50-31-201, unless:

(a) it conforms to that definition and standard; and

(b) its label bears the name of the food specified in the definition and standard and, as may be required by the regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in the food;

(8) it purports to be or is represented as:

(a) a food for which a standard of quality has been prescribed by regulations as provided by 50-31-201 and its quality falls below that standard, unless its label bears, in a manner and form that the regulations specify, a statement that it falls below that standard; or

(b) a food for which a standard or standards of fill of container have been prescribed by regulation as provided by 50-31-201 and it falls below the standard of fill of container applicable, unless its label bears, in a manner and form that the regulations specify, a statement that it falls below that standard;

(9) it is not subject to the provisions of subsection (7) unless it bears labeling clearly giving:

(a) the common or usual name of the food, if there is one; and

(b) in case it is fabricated from two or more ingredients, the common or usual name of each ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each. To the extent that compliance with the requirements of this subsection (9)(b) is impractical or results in deception or unfair competition, exemptions must be established by regulations promulgated by the department. The requirements of this subsection (9)(b) do not apply to food products that are packaged at the direction of purchasers at retail at the time of sale, the ingredients of which are disclosed to the purchasers by other means in accordance with regulations promulgated by the department.

(10) it purports to be or is represented for special dietary uses, unless its label bears information concerning its vitamin, mineral, and other dietary properties that the department determines to be and by regulations prescribes as necessary in order to fully inform purchasers as to its value for special dietary uses;

(11) it bears or contains any artificial flavoring, artificial coloring, or chemical preservative unless it bears labeling stating that fact. To the extent that compliance with the requirements of this subsection is impracticable, exemptions must be established by regulations promulgated by the department. Butter, cheese, ice cream, and frozen desserts as described in 81-22-101 are exempt from label statements for artificial flavoring and artificial coloring.

(12) it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded;

(13) it is a color additive, unless its packaging and labeling are in conformity with packaging and labeling requirements applicable to that color additive prescribed under the provisions of the federal act.

History: En. Sec. 11, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-711; amd. Sec. 2, Ch. 605, L. 1985; amd. Sec. 212, Ch. 42, L. 1997; amd. Sec. 4, Ch. 172, L. 1999.

Cross-References

Actual and constructive fraud, 28-2-404 through 28-2-406.

Deceptive business practices, 45-6-318.

50-31-204. Labeling requirements for products in semblance of honey or containing honey. (1) Any product sold in semblance of honey which is a blend or mixture of honey and other ingredients must be labeled in such a way that the name of the main ingredient added to the honey will be printed so that it will be as prominent and conspicuous as the word "honey". The word "imitation" may not be used in the name of a product which is in semblance of honey whether or not it contains any honey.

(2) The label for a product which is not in semblance of honey and which contains honey may include the word "honey" in the name of the product. The relative position of the word "honey" in the product name and in the list of ingredients, when required, shall be determined by its prominence as an ingredient in the product.

History: En. Sec. 3, Ch. 307, L. 1967; amd. Sec. 2, Ch. 171, L. 1971; amd. Sec. 2, Ch. 114, L. 1974; amd. Sec. 9, Ch. 403, L. 1977; R.C.M. 1947, 27-703(part).

Cross-References

Deceptive business practices, 45-6-318.

Labeling violations penalties, 50-31-506.
Injunctive remedies, 50-31-508.

50-31-205. Repealed. Sec. 6, Ch. 373, L. 2003.
History: En. Sec. 12, Ch. 307, L. 1967; R.C.M. 1947, 27-712(a).

50-31-206. Repealed. Sec. 6, Ch. 373, L. 2003.
History: En. Sec. 12, Ch. 307, L. 1967; R.C.M. 1947, 27-712(c).

50-31-207. Repealed. Sec. 6, Ch. 373, L. 2003.
History: En. Sec. 12, Ch. 307, L. 1967; R.C.M. 1947, 27-712(b).

50-31-208. Sale of hamburger and beef patty mix. (1) A food service establishment or retail meat establishment may not use the terms "hamburger", "burger", or other similar term in any advertisement or menu to refer to any beef patty mix. A food service establishment or retail meat establishment selling or serving beef patty mix may refer to the product as "beef patty mix" or by any other term that accurately informs the customer of the nature of the food product being sold or served.

(2) If beef patty mix is sold or served in a food service establishment or retail meat establishment, a list of ingredients must appear on the menu or label or, if there is not a menu or label, on a placard as follows:

(a) The term "beef patty mix" or any other term that accurately informs the customer of the nature of the food product and its ingredients must be included.

(b) The ingredients must be listed in descending order of predominance by weight.

(c) The lettering on the placard must be at least 1 inch in height (72-point letters), in boldface, and in colors that contrast with the placard.

(d) The placard must be posted in a permanent place, conspicuous to the customer, in each room or area where food is served or sold at retail.

(3) If hamburger or ground beef is sold in a retail meat establishment, the grade of hamburger or ground beef, as enumerated in 50-31-103(18), and the maximum fat and minimum lean content must appear on each displayed package or, if the product is not packaged for display, on a placard. If a placard is used, it must satisfy the requirements of subsections (2)(c) and (2)(d). The provisions of this subsection do not apply to the service of prepared hamburger or ground beef at a food service establishment.

History: En. Sec. 5, Ch. 456, L. 1979; amd. Sec. 2, Ch. 361, L. 1981; amd. Sec. 6, Ch. 169, L. 1989; amd. Sec. 2, Ch. 133, L. 1991; amd. Sec. 3, Ch. 373, L. 2003.

Cross-References
Penalties for violation, 50-31-506.
Injunctive remedies, 50-31-508.

50-31-209 through 50-31-220 reserved.

50-31-221. Repealed. Secs. 5, 7(2), Ch. 172, L. 1999.
History: En. Sec. 3, Ch. 605, L. 1985.

50-31-222. Repealed. Secs. 5, 7(2), Ch. 172, L. 1999.
History: En. Sec. 4, Ch. 605, L. 1985.

50-31-223. Repealed. Secs. 5, 7(2), Ch. 172, L. 1999.
History: En. Sec. 5, Ch. 605, L. 1985.

50-31-224 through 50-31-230 reserved.

50-31-231. Repealed. Secs. 5, 7(2), Ch. 172, L. 1999.
History: En. Sec. 6, Ch. 605, L. 1985.

50-31-232 through 50-31-235 reserved.

50-31-236. Repealed. Sec. 6, Ch. 373, L. 2003.
History: En. Sec. 2, Ch. 169, L. 1989.

50-31-237. Health claims for bottled water. Claims of medicinal or health-giving properties on labels or in advertisements for bottled water are prohibited.

History: En. Sec. 3, Ch. 169, L. 1989.

50-31-238. Repealed. Sec. 6, Ch. 373, L. 2003.

History: En. Sec. 4, Ch. 169, L. 1989.

Part 3
Drugs and Devices

Part Cross-References

Pharmacy regulation, Title 37, ch. 7.
Dangerous drugs, Title 45, ch. 9.
Model Drug Paraphernalia Act, Title 45, ch. 10, part 1.
Controlled substances, Title 50, ch. 32.

50-31-301. Definitions. As used in this part, the following definitions apply:

(1) "Antibiotic drug" means any drug intended for use by humans containing any quantity of any chemical substance that is produced by a microorganism and that has the capacity to inhibit or destroy microorganisms in dilute solution (including the chemically synthesized equivalent of such a substance).

(2) "Code imprint" means a series of letters or numbers assigned by the manufacturer or distributor to a specific drug, marks or monograms unique to the manufacturer or distributor of the drug, or both.

(3) "Distributor" means a person who distributes for resale a drug in solid dosage form under the person's own label whether or not the person is the manufacturer of the drug.

(4) "Established name", with respect to a drug or ingredient of the drug, means:

(a) the applicable official name designated pursuant to section 508 of the federal act (21 U.S.C. 358);

(b) if there is no official name and the drug or the ingredient is an article recognized in an official compendium, then the official title of the drug or ingredient in the compendium. If this subsection (4)(b) applies to an article recognized in the United States Pharmacopoeia, the official title used in the United States Pharmacopoeia applies.

(c) if neither subsection (4)(a) nor (4)(b) applies, then the common or usual name, if any, of the drug or of the ingredient.

(5) "Legend drug" means any drug defined by section 503(b) of the federal act (21 U.S.C. 353(b)), as amended on January 15, 1980, under which its label is required to bear the statement: "Caution: Federal law prohibits dispensing without prescription."

(6) "Manufacturer" means a person who mixed the final ingredients and prepared the final drug product.

(7) "Solid dosage form" means capsules or tablets intended for oral use.

History: En. Sec. 15, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-715(part); amd. Sec. 1, Ch. 403, L. 1979; amd. Sec. 1, Ch. 95, L. 1981; amd. Sec. 1, Ch. 239, L. 1983; amd. Sec. 213, Ch. 42, L. 1997.

50-31-302. Antiseptics considered to be germicides. The representation of a drug in its labeling or advertisement as an antiseptic is considered to be a representation that it is a germicide except in the case of a drug purporting to be or represented as an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use which involves prolonged contact with the body.

History: En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; R.C.M. 1947, 27-702(n).

50-31-303. Certain drug advertisements considered false. (1) For the purpose of this chapter, the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, or a sexually transmitted disease shall also be deemed to be false, except that no advertisement not in violation of 50-31-107(1) shall be deemed to be false under this section if it is disseminated only to members of the

medical, dental, or veterinary professions or appears only in the scientific periodicals of these professions or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices.

(2) Whenever the department determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the department shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the department may deem necessary in the interests of public health.

(3) This section shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious.

History: En. Sec. 20, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-720(b); amd. Sec. 10, Ch. 37, L. 1979; amd. Sec. 17, Ch. 440, L. 1989.

Cross-References

Advertising drug paraphernalia prohibited, 45-10-106.

50-31-304. Certain drugs and devices exempt from labeling requirements of chapter. Drugs and devices which are, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed shall be exempt from any labeling or packaging requirements of this chapter, provided that such drugs and devices are being delivered, manufactured, processed, labeled, repacked, or otherwise held in compliance with regulations issued by the department or under the federal act.

History: En. Sec. 15, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-715(part).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-31-305. When drug or device adulterated. A drug or device shall be deemed to be adulterated if it:

(1) consists in whole or in part of any filthy, putrid, or decomposed substance;

(2) has been produced, prepared, packed, or held under unsanitary conditions whereby it may have been contaminated with filth or rendered injurious to health;

(3) is a drug and the methods used in or the facilities or controls used for its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess;

(4) is a drug and its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health;

(5) is a drug and it bears or contains, for purposes of coloring only, a color additive which is unsafe within the meaning of the federal act or it is a color additive, the intended use of which in or on drugs is for purposes of coloring only, and is unsafe within the meaning of the federal act;

(6) purports to be or is represented as a drug, the name of which is recognized in an official compendium, and its strength differs from or its quality or purity falls below the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium or, in the absence of or inadequacy of such tests or methods of assay, those prescribed under authority of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this subsection because it differs from the standard of strength, quality, or purity therefor set forth in such compendium if its difference in strength, quality, or purity from such standard is plainly stated on its label.

(7) is not subject to the provisions of subsection (6) of this section and its strength differs from or its purity or quality falls below that which it purports or is represented to possess; or

(8) is a drug and any substance has been:

(a) mixed or packed therewith so as to reduce its quality or strength; or

(b) substituted wholly or in part therefor.

History: En. Sec. 14, Ch. 307, L. 1967; R.C.M. 1947, 27-714; amd. Sec. 11, Ch. 37, L. 1979.

Cross-References

Use of additives, 50-31-109.

50-31-306. When drug or device misbranded. (1) A drug or device is considered to be misbranded:

(a) if its labeling is false or misleading in any particular;

(b) if in package form unless it bears a label containing:

(i) the name and place of business of the manufacturer, packer, or distributor, except that a prescription drug must contain the name and place of business of the manufacturer as well as the packer or distributor; and

(ii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variation may be permitted and exemptions as to small packages may be allowed in accordance with regulations prescribed by the department or issued under the federal act;

(c) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed on the label or labeling with conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in terms that render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) if it is for use by humans and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, sulfonmethane, or any chemical derivative of the substance that, after investigation, has been found to be and designated as habit-forming by regulations issued by the department under this chapter or by regulations issued pursuant to section 502(d) of the federal act (21 U.S.C. 352(d)), unless its label bears the name and quantity or proportion of the substance or derivative in juxtaposition to the statement "Warning--May be habit-forming";

(e) if it is a drug, unless its label bears to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula):

(i) the established name (as defined in 50-31-301) of the drug, if there is one; and

(ii) in case the drug is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances contained in the drug. However, the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subsection (1)(e)(ii), applies only to prescription drugs, and to the extent that compliance with the requirements of this subsection (1)(e)(ii) is impracticable, exemptions may be allowed under regulations promulgated by the department or under the federal act.

(f) unless its labeling bears:

(i) adequate directions for use; however, if any requirement of this subsection (1)(f)(i), as applied to any drug or device, is not necessary for the protection of the public health, the department shall promulgate regulations exempting the drug or device from the requirements, and articles exempted under regulations issued under section 502(f) of the federal act (21 U.S.C. 352(f)) may also be exempt; and

(ii) adequate warnings against use in those pathological conditions or by children when its use may be dangerous to health or adequate warnings against unsafe dosage or methods or duration of administration or application, in a manner and form that are necessary for the protection of users;

(g) if it purports to be a drug, the name of which is recognized in an official compendium unless it is packaged and labeled as prescribed in the compendium. The method of packing may be modified with the consent of the department or if consent is obtained under the federal act. In the event of inconsistency between the requirements of this subsection (1)(g) and those of subsection (1)(e) as to the name by which the drug or its ingredients must be designated, the requirements of subsection (1)(e) prevail.

(h) if it has been found by the department or under the federal act to be a drug liable to deterioration, unless it is packaged in a form and manner and its label bears a statement of precautions that the regulations issued by the department or under the federal act require as necessary for the protection of public health. A regulation may not be established for any drug recognized in an official compendium until the department has informed the appropriate body charged with the revision of the compendium of the need for the packaging or labeling requirements and the body has failed within a reasonable time to prescribe the requirements.

(i) if it is a drug and its container is made, formed, or filled in a way that is misleading;

(j) if it is an imitation of another drug;

(k) if it is offered for sale under the name of another drug;

(l) if it is dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended, or suggested in the labeling;

(m) if it is, purports to be, or is represented as a drug composed wholly or partly of insulin, unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 506 of the federal act (21 U.S.C. 356); and

(ii) the certificate or release is in effect with respect to the drug;

(n) if it is, purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, any other antibiotic drug, or any derivative thereof unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 507 of the federal act (21 U.S.C. 357); and

(ii) the certificate or release is in effect with respect to the drug. This subsection (1)(n) does not apply to any drug or class of drugs exempted by regulations promulgated under section 507(c) or (d) of the federal act (21 U.S.C. 357(c) or (d)).

(o) if it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with the packaging and labeling requirements applicable to the color additive prescribed under the provisions of 50-31-108 or of the federal act;

(p) in the case of any prescription drug distributed or offered for sale in this state, unless the manufacturer, packer, or distributor of the drug includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of:

(i) the established name, as defined in 50-31-301;

(ii) the formula showing quantitatively each ingredient of the drug to the extent required for labels under section 502(e) of the federal act (21 U.S.C. 352(e)); and

(iii) other information in brief summary relating to side effects, contraindications, and effectiveness that is required in regulations issued under the federal act; or

(q) if a trademark, trade name, or other identifying mark, imprint, or device or another or any likeness of the foregoing has been placed on the drug or upon its container with intent to defraud.

(2) A drug that is subject to 50-31-307 is considered to be misbranded if, at any time prior to dispensing, its label fails to bear the statement "Caution: Federal Law Prohibits Dispensing Without Prescription", or "Caution: State Law Prohibits Dispensing Without Prescription". A drug to which 50-31-307 does not apply is considered to be misbranded if, at any time prior to dispensing, its label bears the caution statement quoted in the preceding sentence.

History: En. Secs. 15, 16, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-715(part), 27-716(d); amd. Sec. 12, Ch. 37, L. 1979; amd. Sec. 2, Ch. 403, L. 1979; amd. Sec. 214, Ch. 42, L. 1997.

Cross-References

Regulation of sale of drugs and medicines by Board of Pharmacy, 37-7-201.

50-31-307. Dispensing of prescription drugs. (1) A drug intended for use by humans that is included in one of the categories in subsection (2) may be dispensed only:

(a) upon a written prescription of a practitioner licensed by law to administer the drug;

(b) upon an oral prescription of the practitioner that is reduced promptly to writing and filed by the pharmacist; or

(c) by refilling a written or oral prescription if the refilling is authorized by the practitioner, either in the original prescription or by an oral order that is reduced promptly to writing and filed by the pharmacist.

(2) A drug must be dispensed as provided in subsection (1) if the drug:

(a) is a habit-forming drug to which 50-31-306(1)(d) applies;

(b) because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer the drug; or

(c) is limited by an approved application under section 505 of the federal act (21 U.S.C. 355) or 50-31-311 to use under the professional supervision of a practitioner licensed by law to administer the drug.

(3) If the drug is a factory prepackaged oral contraceptive, it may be dispensed as provided in subsection (1) or by a registered nurse employed by a family planning clinic under contract with the department of public health and human services pursuant to a physician's written protocol specifying the circumstances under which dispensing is appropriate and pursuant to the board of pharmacy's rules concerning labeling, storage, and recordkeeping of drugs.

(4) The act of dispensing a drug contrary to the provisions of this section is considered an act that results in a drug being misbranded while held for sale.

History: En. Sec. 16, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-716(a); amd. Sec. 3, Ch. 472, L. 1989; amd. Sec. 130, Ch. 418, L. 1995; amd. Sec. 308, Ch. 546, L. 1995; amd. Sec. 215, Ch. 42, L. 1997.

Cross-References

Regulation of sale of drugs and medicines by Board of Pharmacy, 37-7-201.

Distribution or sale of DMSO for human use, 50-42-102.

50-31-308. Prescription drugs exempt from certain provisions of chapter. Any drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug shall be exempt from the requirements of 50-31-306, except subsections (1)(a), (1)(j), (1)(k), (1)(m), (1)(n), and the packaging requirements of subsections (1)(g) and (1)(h), if the drug bears a label containing the name and address of the dispenser, the serial number and date of the prescription or of its filling, the name of the prescriber, and if stated in the prescription, the name of the patient and the directions for use and cautionary statements, if any, contained in such prescription. This exemption shall not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail or to a drug dispensed in violation of 50-31-307.

History: En. Sec. 16, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-716(b).

50-31-309. Removal of drugs from prescription requirement. The department may by regulation remove drugs subject to 50-31-306(1)(d) and 50-31-311 from the requirements of 50-31-307 when such requirements are not necessary for the protection of the public health. Drugs removed from the prescription requirements of the federal act by regulations issued thereunder may also, by regulations issued by the department, be removed from the requirements of 50-31-307.

History: En. Sec. 16, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-716(c).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-31-310. Narcotic and marijuana laws not affected. Nothing in 50-31-306(2), 50-31-307, 50-31-308, or 50-31-309 shall be construed to relieve any person from any requirement prescribed by or under authority of law with respect to drugs now included or which may hereafter be included within the classifications of narcotic drugs or marijuana, as defined in the applicable federal and state laws relating to narcotic drugs and marijuana.

History: En. Sec. 16, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-716(e).

Cross-References

Offenses involving dangerous drugs, Title 45, ch. 9.

50-31-311. New drug application required. (1) Except as provided in Title 50, chapter 42, a person may not sell, deliver, offer for sale, hold for sale, or give away any new drug unless:

(a) an application with respect to the drug has been approved and the approval has not been withdrawn under section 505 of the federal act (21 U.S.C. 355); or

(b) when not subject to the federal act, the drug has been tested and has been found to be safe for use and effective in use under the conditions prescribed, recommended, or suggested in the labeling of the drug and, prior to selling or offering for sale the drug, there has been filed with the department an application setting forth:

(i) full reports of investigations that have been made to show whether or not the drug is safe for use and whether the drug is effective in use;

(ii) a full list of the articles used as components of the drug;

(iii) a full statement of the composition of the drug;

(iv) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of the drug;

(v) samples of the drug and of the articles used as components of the drug that the department may require; and

(vi) specimens of the labeling proposed to be used for the drug.

(2) An application provided for in subsection (1)(b) becomes effective on the 180th day after the filing of the application. However, if the department finds, after due notice to the applicant and giving the applicant an opportunity for a hearing, that the drug is not safe or not effective for use under the conditions prescribed, recommended, or suggested in the proposed labeling of the drug, the department shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

(3) An order refusing to permit an application under this section to become effective may be revoked by the department.

History: En. Sec. 17, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-717(a) thru (c); amd. Sec. 1, Ch. 333, L. 1981; amd. Sec. 216, Ch. 42, L. 1997.

50-31-312. Exemptions from new drug application requirement. (1) Section 50-31-311 does not apply to:

(a) a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs, provided the drug is plainly labeled in compliance with regulations issued by the department or pursuant to section 505(i) or 507(d) of the federal act (21 U.S.C. 355(i) or 357(d));

(b) a drug sold in this state at any time prior to the enactment of this chapter or introduced into interstate commerce at any time prior to the enactment of the federal act;

(c) any drug that is manufactured by an establishment licensed under 42 U.S.C. 262; or

(d) any drug that is subject to 50-31-306(1)(n).

(2) The provisions of 50-31-103(23) do not apply to any drug, when the drug is intended solely for use under conditions prescribed, recommended, or suggested in labeling with respect to the drug, that on October 9, 1962, or on the date immediately preceding July 1, 1967:

(a) was commercially sold or used in this state or in the United States;

(b) was not a new drug as defined by 50-31-103(23) as then in force; and

(c) was not covered by an effective application under 50-31-311 or under section 505 of the federal act (21 U.S.C. 355).

History: En. Sec. 17, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-717(d), (e); amd. Sec. 2, Ch. 456, L. 1979; amd. Sec. 7, Ch. 169, L. 1989; amd. Sec. 217, Ch. 42, L. 1997; amd. Sec. 4, Ch. 373, L. 2003.

50-31-313. Code imprint required on legend drugs. No legend drug in solid dosage form may be manufactured or distributed in this state unless it is clearly marked or imprinted with a code imprint identifying the drug and the manufacturer or distributor of the drug.

History: En. Sec. 2, Ch. 95, L. 1981.

Cross-References

Penalty for violation, 50-31-506.

50-31-314. Exemptions from code imprint requirement. The board of pharmacy may grant exemptions from the requirements of 50-31-313 and 50-31-315 upon a showing by a drug manufacturer or distributor that size, physical characteristics, or other compelling reasons render application of a code imprint on a legend drug subject to the provisions of 50-31-313 impractical or impossible. Any exemption granted must be included in the list required by 50-31-315 and must describe the physical characteristics and type of drug covered by the exemption.

History: En. Sec. 3, Ch. 95, L. 1981; amd. Sec. 1, Ch. 247, L. 1983.

Cross-References

Board of Pharmacy, Title 37, ch. 7, part 2.

50-31-315. List of code imprints to be provided. Upon request of the board of pharmacy, all manufacturers and distributors of legend drugs in solid dosage form who produce or distribute legend drugs in Montana must provide and keep current a list of those drugs, which list identifies the manufacturer and the specific type of each drug by code imprint.

History: En. Sec. 4, Ch. 95, L. 1981; amd. Sec. 1, Ch. 247, L. 1983.

Cross-References

Board of Pharmacy, Title 37, ch. 7, part 2.

Penalty for violation, 50-31-506.

Part 4
Cosmetics

Part Cross-References

Licensing of barbers, cosmetologists, electrologists, estheticians, and manicurists, Title 37, ch. 31.

50-31-401. When cosmetic adulterated. A cosmetic shall be deemed to be adulterated if:

(1) it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual;

(2) it consists in whole or in part of any filthy, putrid, or decomposed substance;

(3) it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or rendered injurious to health;

(4) its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(5) it is not a hair dye and it is or it bears or contains a color additive which is unsafe within the meaning of the federal act.

History: En. Sec. 18, Ch. 307, L. 1967; R.C.M. 1947, 27-718(part).

Cross-References

Use of additives, 50-31-109.

50-31-402. When cosmetic misbranded. A cosmetic shall be deemed to be misbranded if:

(1) its labeling is false or misleading in any particular;

(2) in package form unless it bears a label containing:

(a) the name and place of business of the manufacturer, packer, or distributor; and

(b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variations shall be permitted and exemptions as to small packages shall be established by regulations prescribed by the department;

(3) any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(4) its container is so made, formed, or filled as to be misleading;

(5) it is a color additive, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of the federal act.

History: En. Sec. 19, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-719(part).

50-31-403. Exceptions for hair dyes. (1) Section 50-31-401 shall not apply to coal tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution--This product contains ingredients which may cause skin irritation on certain individuals, and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness", and the labeling of which bears adequate directions for such preliminary testing.

(2) Section 50-31-402(5) shall not apply to packages of color additives which, with respect to their use for cosmetics, are marketed and intended for use only in or on hair dyes (as defined in 50-31-404).

History: (1)En. Sec. 18, Ch. 307, L. 1967; Sec. 27-718, R.C.M. 1947; (2)En. Sec. 19, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 27-719, R.C.M. 1947; R.C.M. 1947, 27-718(part), 27-719(part).

50-31-404. Term hair dye not to include eyelash or eyebrow dyes. For the purpose of 50-31-401(5) and 50-31-403, the term "hair dye" shall not include eyelash dyes or eyebrow dyes.

History: En. Sec. 18, Ch. 307, L. 1967; R.C.M. 1947, 27-718(part).

Part 5
Prohibited Acts, Penalties, and Remedies

50-31-501. Prohibited acts. The following acts and the causing of the acts within the state of Montana are prohibited:

(1) the manufacture, sale or delivery, holding, or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded;

(2) the adulteration or misbranding of any food, drug, device, or cosmetic;

(3) the receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded and the delivery or proffered delivery of any food, drug, device, or cosmetic for pay or otherwise;

(4) the sale, delivery for sale, holding for sale, or offering for sale of any article in violation of 50-31-311;

(5) the dissemination of any false advertisement;

(6) the refusal to permit entry or inspection or to permit the taking of a sample, as authorized by 50-31-106;

(7) the giving of a guaranty or undertaking if the guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking signed by and containing the name and address of a person residing in the state of Montana and from whom the person received in good faith the food, drug, device, or cosmetic;

(8) the removal or disposal of a detained or embargoed article in violation of 50-31-509;

(9) the alteration, mutilation, destruction, obliteration, or commission of any other act with respect to a food, drug, device, or cosmetic or the removal, in whole or in part, of the labeling of a food, drug, device, or cosmetic if the act is done while the article is held for sale and results in the article being adulterated or misbranded;

(10) forging, counterfeiting, simulating, or falsely representing or, without proper authority, using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of this chapter or federal act;

(11) using on the labeling of any drug or in any advertisement relating to the drug any representation or suggestion that an application with respect to the drug is effective under 50-31-311 or that the drug complies with the provisions of 50-31-311;

(12) in the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor to maintain for transmittal or to transmit to any practitioner, licensed by applicable law to administer the drug and who makes written request for information as to the drug, true and correct copies of all printed matter that is required to be included in any package in which that drug is distributed or sold or other printed matter as is approved under the federal act. This subsection does not exempt any person from any labeling requirement imposed by or under other provisions of this chapter.

(13) placing or causing to be placed upon any drug, device, or container of a drug or device, with intent to defraud, the trade name, other identifying mark, or imprint of another or any likeness of the name, mark, or imprint;

(14) selling, dispensing, disposing of, or causing to be sold, dispensed, or disposed of or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, any drug, device, or any container of the drug or device with knowledge that the trade name, other identifying mark, or imprint of another or any likeness of any of the foregoing has been placed on the drug, device, or container in a manner prohibited by subsection (13);

(15) making, selling, disposing of, or causing to be made, sold, or disposed of or keeping in possession, control, or custody or concealing, with intent to defraud, any punch, die, plate, or other thing designed to print, imprint, or reproduce a trade name, other identifying mark, or imprint of another or any likeness of the name, mark, or imprint upon any drug, device, or container of the drug or device;

(16) the using by any person to the person's own advantage or revealing, other than to officers or employees of the department or the courts when relevant in any judicial proceeding under this chapter, any information acquired under authority of this chapter concerning any method or process that as a trade secret is entitled to protection;

(17) the distribution in commerce of a consumer commodity if the commodity is contained in a package or if there is affixed to that commodity a label that does not conform to the provisions of this chapter and of regulations promulgated under authority of this chapter. This prohibition does not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that the persons:

(a) are engaged in the packaging or labeling of the commodities; or

(b) prescribe or specify by any means the manner in which the commodities are packaged or labeled.

(18) the labeling or packaging of a food, drug, device, or cosmetic that fails to conform with the requirements of this chapter.

History: En. Sec. 3, Ch. 307, L. 1967; amd. Sec. 2, Ch. 171, L. 1971; amd. Sec. 2, Ch. 114, L. 1974; amd. Sec. 9, Ch. 403, L. 1977; R.C.M. 1947, 27-703(1) thru (16); amd. Sec. 309, Ch. 546, L. 1995; amd. Sec. 5, Ch. 373, L. 2003.

Cross-References

Immunity of persons donating food for free distribution, 27-1-716.
Deceptive business practices, 45-6-318.
Alteration of dangerous drug labels unlawful -- penalty, 45-9-105, 45-9-106.
Penalties, 50-31-506.

50-31-502. Unlawful labeling of products resembling honey. It is unlawful for any person to sell or offer for sale any product which is in semblance of honey and which is labeled, advertised, or otherwise represented to be honey if it is not honey.

History: En. Sec. 3, Ch. 307, L. 1967; amd. Sec. 2, Ch. 171, L. 1971; amd. Sec. 2, Ch. 114, L. 1974; amd. Sec. 9, Ch. 403, L. 1977; R.C.M. 1947, 27-703(part).

Cross-References

Labeling requirements, 50-31-204.
Penalties, 50-31-506.

50-31-503. Prosecution of minor violations not required. Nothing in this chapter shall be construed as requiring the department to report for the institution of proceedings under this chapter minor violations of this chapter whenever the department believes that the public interest will be adequately served in the circumstances by a suitable written notice of warning.

History: En. Sec. 8, Ch. 307, L. 1967; R.C.M. 1947, 27-708.

50-31-504. Notice and hearing required prior to prosecution. Before a violation of this chapter is reported to a state or county attorney for the institution of a criminal proceeding, the person against whom the proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the department or its designated agent, either orally or in writing and either in person or by attorney, with regard to the contemplated proceeding.

History: En. Sec. 7, Ch. 307, L. 1967; amd. Sec. 2, Ch. 187, L. 1977; R.C.M. 1947, 27-707(part).

Cross-References

Contested case defined -- applicability of Montana Administrative Procedure Act, 2-4-102.

50-31-505. Duty of state or county attorneys to prosecute. Each state attorney or county attorney to whom the department reports a violation of this chapter shall cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

History: En. Sec. 7, Ch. 307, L. 1967; amd. Sec. 2, Ch. 187, L. 1977; R.C.M. 1947, 27-707(part).

Cross-References

Duties of Attorney General, 2-15-501.
Duties of County Attorney relating to state matters, 7-4-2716.

50-31-506. Penalties. (1) Any person who violates any of the provisions of 50-31-204, 50-31-208, 50-31-313, 50-31-315, 50-31-501, or 50-31-502 is guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than 3 months, a fine of not more than $250, or both such imprisonment and fine.

(2) If the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment for not more than 6 months, a fine of not more than $500, or both such imprisonment and fine.

History: En. Sec. 5, Ch. 307, L. 1967; R.C.M. 1947, 27-705(a); amd. Sec. 3, Ch. 456, L. 1979; amd. Sec. 5, Ch. 95, L. 1981.

Cross-References

Immunity of persons donating food for free distribution, 27-1-716.

Unauthorized sale or distribution of DMSO for human use, 50-42-102.

50-31-507. Exceptions to penalties. (1) No person shall be subject to the penalties of 50-31-506 for having violated subsection (1) or (3) of 50-31-501 if he establishes a guaranty or undertaking signed by and containing the name and address of the person residing in the state of Montana from whom he received in good faith the article to the effect that such article is not adulterated or misbranded within the meaning of this chapter, designating this chapter.

(2) No publisher, radiobroadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under 50-31-506 by reason of the dissemination by him of such false advertisement, unless he has refused, on the request of the department, to furnish the department the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency residing in the state of Montana who causes him to disseminate such advertisement.

History: En. Sec. 5, Ch. 307, L. 1967; R.C.M. 1947, 27-705(b), (c).

Cross-References

Freedom of speech and expression, Art. II, sec. 7, Mont. Const.

50-31-508. Injunction to restrain prohibited acts. In addition to the remedies hereinafter provided, the department is hereby authorized to apply to district court for and such court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction restraining any person from violating any provision of 50-31-204, 50-31-208, 50-31-501, or 50-31-502, irrespective of whether or not there exists an adequate remedy at law.

History: En. Sec. 4, Ch. 307, L. 1967; R.C.M. 1947, 27-704; amd. Sec. 4, Ch. 456, L. 1979.

Cross-References

Injunctions, Title 27, ch. 19.

50-31-509. Detainer of adulterated or misbranded articles. (1) If an agent of the department finds or has probable cause to believe that any food, drug, device, or cosmetic is adulterated or so misbranded as to be dangerous or fraudulent within the meaning of this chapter, he shall affix to the article a tag or other appropriate marking giving notice that the article is or is suspected of being adulterated or misbranded and has been detained or embargoed and warning all persons not to remove or dispose of the article by sale or otherwise until permission for removal or disposal is given by the agent or the court. It is unlawful for a person to remove or dispose of a detained or embargoed article by sale or otherwise without permission. The owner of an embargoed article or another authorized person and the department may enter into a disposal agreement providing for the disposal, reconditioning, or other disposition of the embargoed article. If such an agreement is executed or if the embargo is otherwise removed by the department or the court, neither the department nor the state may be held liable for damages caused by such embargo provided that probable cause existed for its imposition.

(2) If an article detained or embargoed under subsection (1) is found by the agent to be adulterated or misbranded and a disposal agreement is not executed as provided in subsection (1), the agent shall petition the justice of peace, city judge, or district court in whose jurisdiction the article is detained or embargoed for an order for condemnation of the article. If the agent finds that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is adulterated or misbranded, the article shall, after entry of the decree, be destroyed at the expense of the claimant thereof under the supervision of the agent and all court costs and fees and storage and other proper expenses shall be taxed against the claimant of the article or his agent.

(4) If the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after the costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that the article will be so labeled or processed, has been executed, may by order direct that the article be delivered to the claimant thereof for the labeling or processing under the supervision of an agent of the department. The expense of the supervision shall be paid by claimant. The article shall be returned to the claimant on the representation to the court by the department that the article is no longer in violation of this chapter and that the expenses of the supervision have been paid.

History: En. Sec. 6, Ch. 307, L. 1967; amd. Sec. 1, Ch. 187, L. 1977; R.C.M. 1947, 27-706(1) thru (3); amd. Sec. 1, Ch. 158, L. 1981.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.
Justices' Courts jurisdiction, Title 3, ch. 10, part 3.
City Court jurisdiction, Title 3, ch. 11, part 1.

50-31-510. Condemnation of perishables. Whenever the department or any of its authorized agents find in any room, building, vehicle of transportation, or other structure any meat, seafood, poultry, vegetable, fruit, or other perishable article which is unsound or contains any filthy, decomposed, or putrid substance or that may be poisonous or deleterious to health or otherwise unsafe, the article being hereby declared to be a nuisance, the department or its authorized agent shall immediately condemn or destroy the article or in any other manner render the article unsalable as human food.

History: En. Sec. 6, Ch. 307, L. 1967; amd. Sec. 1, Ch. 187, L. 1977; R.C.M. 1947, 27-706(4).

CHAPTER 32
CONTROLLED SUBSTANCES

Part 1 -- General Provisions

50-32-101. Definitions.
50-32-102. Uniformity of construction.
50-32-103. Board to administer chapter.
50-32-104. Board's authority limited.
50-32-105. Board to conduct educational programs.
50-32-106. Board to encourage research.

Part 2 -- Scheduling of Dangerous Drugs

50-32-201. General criteria to be considered.
50-32-202. Designation of drug as dangerous drug.
50-32-203. Effect of rescheduling under federal law.
50-32-204. Immediate precursors.
50-32-205. Nonprescription drugs not to be scheduled.
50-32-206. Use of names of scheduled drugs.
50-32-207. Order forms for drugs in Schedules I and II.
50-32-208. Prescription and medical requirements for scheduled drugs -- penalty.
50-32-209. Republication of schedules.
50-32-210 through 50-32-220 reserved.
50-32-221. Criteria for placement of drug in Schedule I.
50-32-222. Specific dangerous drugs included in Schedule I.
50-32-223. Criteria for placement of drug in Schedule II.
50-32-224. Specific dangerous drugs included in Schedule II.
50-32-225. Criteria for placement of drug in Schedule III.
50-32-226. Specific dangerous drugs included in Schedule III.
50-32-227. Board authorized to exempt certain compounds, mixtures, or preparations from Schedule III.
50-32-228. Criteria for placement of drug in Schedule IV.
50-32-229. Specific dangerous drugs included in Schedule IV.
50-32-230. Board authorized to exempt certain compounds, mixtures, or preparations from Schedule IV.
50-32-231. Criteria for placement of drug in Schedule V.
50-32-232. Specific dangerous drugs included in Schedule V.
50-32-233. Exempt anabolic steroid products.

Part 3 -- Annual Registration

50-32-301. Annual registration required for manufacturer, distributor, or dispenser.

50-32-302. Exceptions to registration requirement.
50-32-303. Waiver of registration requirement for practitioners licensed by federal government.
50-32-304. Waiver of registration requirement when in public interest.
50-32-305. Separate registration required.
50-32-306. Criteria for registration of manufacturers and distributors.
50-32-307. Manufacture and distribution limited by registration.
50-32-308. Criteria for registration of practitioners.
50-32-309. Registrants to maintain records and inventories.
50-32-310. Inspections authorized.
50-32-311. Revocation or suspension of registration.
50-32-312. Procedure for denial, suspension, revocation of, or refusal to renew registration.
50-32-313. Practitioner's failure to register a misdemeanor.
50-32-314. Board to adopt rules for registration of ambulatory surgical facilities.

Part 4 -- Transfer of Precursors to Controlled Substances

50-32-401. Report required for precursor to controlled substance.
50-32-402. Reports required -- exceptions.
50-32-403. Common reporting form.
50-32-404. Loss, theft, or other discrepancy to be reported.
50-32-405. Violation -- penalties.

Part 1
General Provisions

50-32-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Administer" means the direct application of a dangerous drug, whether by injection, inhalation, ingestion, or other means, to the body of a patient or research subject by:

(a) a practitioner or by the practitioner's authorized agent; or

(b) the patient or research subject at the direction and in the presence of the practitioner.

(2) (a) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser.

(b) The term does not include a common or contract carrier, public warehouse operator, or employee of the carrier or warehouse operator.

(3) "Board" means the board of pharmacy provided for in 2-15-1733.

(4) "Bureau" means the drug enforcement administration, United States department of justice, or its successor agency.

(5) "Counterfeit substance" means a dangerous drug or the container or labeling of a dangerous drug without authorization that bears the trademark, trade name, or other identifying mark, imprint, number, or device or a likeness of an identifying mark, imprint, number, or device of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the drug.

(6) "Dangerous drug" means a drug, substance, or immediate precursor in Schedules I through V set forth in part 2.

(7) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a dangerous drug, whether or not there is an agency relationship.

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) "Dispense" means to deliver a dangerous drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the drug for that delivery.

(10) "Dispenser" means a practitioner who dispenses.

(11) "Distribute" means to deliver other than by administering or dispensing a dangerous drug.

(12) "Distributor" means a person who distributes.

(13) "Drug" has the same meaning as provided in 37-7-101.

(14) "Hashish", as distinguished from marijuana, means the mechanically processed or extracted plant material that contains tetrahydrocannabinol (THC) and is composed of resin from the cannabis plant.

(15) "Immediate precursor" means a substance that the board finds to be and by rule designates as being the principal compound commonly used or produced primarily for use and that is an immediate chemical intermediary used or likely to be used in the manufacture of a dangerous drug, the control of which is necessary to prevent, curtail, or limit manufacture.

(16) (a) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a dangerous drug either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis and includes the packaging or repackaging of the drug or labeling or relabeling of its container.

(b) Manufacture does not include the preparation or compounding of a dangerous drug by an individual for personal use or the preparation, compounding, packaging, or labeling of a dangerous drug:

(i) by a practitioner as an incident to the administering or dispensing of a dangerous drug in the course of a professional practice; or

(ii) by a practitioner or the practitioner's authorized agent under the practitioner's supervision for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale.

(17) "Marijuana (marihuana)" means all plant material from the genus cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

(18) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) opium and opiate and a salt, compound, derivative, or preparation of opium or opiate;

(b) a salt, compound, isomer, derivative, or preparation of a salt, compound, isomer, or derivative that is chemically equivalent or identical with any of the drugs referred to in subsection (18)(a), but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw; or

(d) coca leaves and a salt, compound, derivative, or preparation of coca leaves and a salt, compound, isomer, derivative, or preparation of a salt, compound, isomer, or derivative that is chemically equivalent or identical with any of these drugs, but not including decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine.

(19) "Opiate" means a drug having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term does not include, unless specifically designated as a dangerous drug under 50-32-202, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term does include its racemic and levorotatory forms.

(20) "Opium poppy" means the plant of the species papaver somniferum L., except its seeds.

(21) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(22) "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing.

(23) "Practitioner" means:

(a) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state;

(b) a pharmacy or other institution licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state; and

(c) a physician licensed to practice medicine or a dentist licensed to practice dentistry in another state.

(24) "Prescription" means an order given individually for the person for whom prescribed, directly from the prescriber to the furnisher or indirectly to the furnisher, by means of an order signed by the prescriber and bearing the name and address of the prescriber, the prescriber's license classification, the name of the patient, the name and quantity of the drug or drugs prescribed, the directions for use, and the date of its issue. These stipulations apply to written, electronically transmitted, and telephoned prescriptions.

(25) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a substance or drug regulated under the provisions of this chapter.

(26) "State", when applied to a part of the United States, includes a state, district, commonwealth, territory, insular possession of the United States, and any area subject to the legal authority of the United States of America.

(27) "Ultimate user" means a person who lawfully possesses a dangerous drug for personal use or for the use of a member of the person's household or for administering to an animal owned by the person or by a member of the person's household.

History: En. Sec. 1, Ch. 412, L. 1973; amd. Sec. 1, Ch. 350, L. 1974; amd. Sec. 1, Ch. 382, L. 1975; amd. Sec. 6, Ch. 187, L. 1977; R.C.M. 1947, 54-301; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 12, Ch. 379, L. 1981; amd. Sec. 1, Ch. 155, L. 1983; amd. Sec. 1, Ch. 247, L. 1983; amd. Sec. 1, Ch. 198, L. 1995; amd. Sec. 15, Ch. 388, L. 2001; amd. Sec. 158, Ch. 483, L. 2001.

Cross-References

Board of Pharmacy, Title 37, ch. 7, part 2.

50-32-102. Uniformity of construction. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those other states which enact it.

History: En. Sec. 28, Ch. 412, L. 1973; R.C.M. 1947, 54-326.

50-32-103. Board to administer chapter. (1) The board shall administer this chapter and may add drugs to or delete or reschedule all drugs enumerated in the schedules in 50-32-222, 50-32-224, 50-32-226, 50-32-229, or 50-32-232 pursuant to the rulemaking procedures of the Montana Administrative Procedure Act.

(2) The board shall promulgate rules for its administration which are not inconsistent with this chapter and specifically shall levy and the department shall collect reasonable registration fees relating to the registration and control of the manufacture, distribution, and dispensing of dangerous drugs within the state. The maximum fee for any registration shall not exceed $100 per year.

History: En. Secs. 2, 15, Ch. 412, L. 1973; amd. Secs. 2, 5, Ch. 350, L. 1974; R.C.M. 1947, 54-302(part), 54-315.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Board of Pharmacy, Title 37, ch. 7, part 2.

50-32-104. Board's authority limited. Authority to control under 50-32-103 does not extend to distilled spirits, liquor, wine, malt beverages, beer, porter, ale, stout, or tobacco.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(5).

Cross-References

Control of liquor, beer, and wine, Title 16, ch. 3.

50-32-105. Board to conduct educational programs. (1) The board shall carry out educational programs designed to prevent and deter misuse and abuse of dangerous drugs.

(2) In connection with these programs, it may:

(a) promote better recognition of the problems of misuse and abuse of dangerous drugs within the regulated industry and among interested groups and organizations;

(b) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of dangerous drugs;

(c) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(d) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of dangerous drugs;

(e) disseminate the results of research on misuse and abuse of dangerous drugs to promote a better public understanding of what problems exist and what can be done to combat them; and

(f) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of dangerous drugs.

History: En. Sec. 23, Ch. 412, L. 1973; amd. Sec. 11, Ch. 350, L. 1974; R.C.M. 1947, 54-323(1).

Cross-References

Teachers required to complete course in drug and alcohol abuse, 20-25-603.

50-32-106. Board to encourage research. (1) The board shall encourage research on misuse and abuse of dangerous drugs.

(2) In connection with the research and in furtherance of the enforcement of this chapter, it may:

(a) establish methods to assess accurately the effects of dangerous drugs and identify and characterize those with potential for abuse;

(b) make studies and undertake programs of research to:

(i) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this chapter;

(ii) determine patterns of misuse and abuse of dangerous drugs and the social effects thereof; and

(iii) improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of dangerous drugs; and

(c) request the department to enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of dangerous drugs.

(3) The board may authorize persons engaged in research on the use and effects of dangerous drugs to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(4) The board may authorize the possession and distribution of dangerous drugs by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of dangerous drugs to the extent of the authorization.

History: En. Sec. 23, Ch. 412, L. 1973; amd. Sec. 11, Ch. 350, L. 1974; R.C.M. 1947, 54-323(2) thru (4).

Part Cross-References

Municipal powers regarding sale and use of opium and opium products, 7-31-4102.

Regulation of dispensing of drugs by practitioners, Title 37, ch. 2, part 1.

Offenses involving dangerous drugs, Title 45, ch. 9.

Part 2
Scheduling of Dangerous Drugs

50-32-201. General criteria to be considered. In making a determination regarding a drug, the board shall consider the following:

(1) the actual or relative potential for abuse;

(2) the scientific evidence of its pharmacological effect, if known;

(3) the state of current scientific knowledge regarding the drug;

(4) the history and current pattern of abuse;

(5) the scope, duration, and significance of abuse;

(6) the risk to the public health;

(7) the potential of the drug to produce psychic or physiological dependence liability; and

(8) whether the drug is an immediate precursor of a drug already controlled under this chapter.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(part).

50-32-202. Designation of drug as dangerous drug. After considering the factors enumerated in 50-32-201, the board shall make findings with respect thereto, and if it finds the drug has a potential for abuse, it shall designate such drug a dangerous drug in the manner set forth in the Montana Administrative Procedure Act.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(2).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

50-32-203. Effect of rescheduling under federal law. If any drug is designated, rescheduled, or deleted as a "controlled substance" under federal law and notice thereof is given to the board, the board shall similarly control the drug under this chapter after the expiration of 30 days from publication in the federal register of a final order designating a drug as a "controlled substance"

or rescheduling or deleting a drug unless, within that 30-day period, the board objects to inclusion, rescheduling, or deletion. In that case, the board shall cause the reasons for objection to be published and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the department shall publish the board's decision which shall be final unless altered thereafter by the board or by statute. Upon publication of objection to inclusion, rescheduling, or deletion under this chapter by the board, control under this chapter is stayed until the board's decision is published.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(4).

50-32-204. Immediate precursors. If the board designates a drug as an immediate precursor, drugs which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(3).

Cross-References

Criminal possession of precursors to dangerous drugs, 45-9-107.

50-32-205. Nonprescription drugs not to be scheduled. The board shall exclude any nonnarcotic drug from a schedule if the drug may, under the Federal Food, Drug, and Cosmetic Act and 50-31-307(2)(b) of the Montana Food, Drug, and Cosmetic Act, be lawfully sold over the counter without a prescription.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(6); amd. Sec. 5, Ch. 472, L. 1989.

50-32-206. Use of names of scheduled drugs. The dangerous drugs listed or to be listed in the schedules in 50-32-222, 50-32-224, 50-32-226, 50-32-229, and 50-32-232 are included by whatever official, common, usual, chemical, or trade name designated.

History: En. Sec. 3, Ch. 412, L. 1973; amd. Sec. 3, Ch. 350, L. 1974; R.C.M. 1947, 54-303.

50-32-207. Order forms for drugs in Schedules I and II. Dangerous drugs in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section unless the board prescribes particular forms to be used.

History: En. Sec. 21, Ch. 412, L. 1973; R.C.M. 1947, 54-321.

50-32-208. Prescription and medical requirements for scheduled drugs -- penalty. (1) No dangerous drug in Schedule II may be dispensed without the written prescription of a practitioner.

(2) In emergency situations, as defined by rule of the board, Schedule II drugs may be dispensed upon a practitioner's oral prescription reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of 50-32-309. No prescription for a Schedule II drug may be refilled.

(3) A dangerous drug included in Schedule III or IV, which is a prescription drug as determined under the federal or Montana food, drug, and cosmetic acts, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than 6 months after the date thereof or be refilled more than five times unless renewed by the practitioner.

(4) A dangerous drug included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(5) Any person who violates the provisions of this section is guilty of a misdemeanor and upon conviction may be fined not to exceed $1,000 or be imprisoned in county jail for a term not to exceed 1 year, or both fined and imprisoned.

History: En. Sec. 22, Ch. 412, L. 1973; amd. Sec. 10, Ch. 350, L. 1974; R.C.M. 1947, 54-322; amd. Sec. 13, Ch. 37, L. 1979; amd. Sec. 13, Ch. 379, L. 1981.

Cross-References

Regulation by Board of Pharmacy of sale of drugs and medicine, 37-7-201.

Regulation of prescriptions, Title 37, ch. 7, part 4.

50-32-209. Republication of schedules. The board shall revise and the department shall republish additions, deletions, or other changes to the schedules of dangerous drugs at times determined by the board. For the purposes of this section, the mandate to republish additions,

deletions, or other changes is satisfied by publication in the Administrative Rules of Montana pursuant to Title 2, chapter 4.

History: En. Sec. 14, Ch. 412, L. 1973; amd. Sec. 4, Ch. 350, L. 1974; R.C.M. 1947, 54-314; amd. Sec. 14, Ch. 379, L. 1981; amd. Sec. 1, Ch. 113, L. 1997.

50-32-210 through 50-32-220 reserved.

50-32-221. Criteria for placement of drug in Schedule I. The board shall place a drug in Schedule I if it finds that the drug:

(1) has high potential for abuse; and

(2) has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

History: En. Sec. 4, Ch. 412, L. 1973; R.C.M. 1947, 54-304.

50-32-222. Specific dangerous drugs included in Schedule I. Schedule I consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Opiates. Unless specifically excepted or listed in another schedule, any of the following are opiates, including isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation:

(a) acetyl-alpha-methylfentanyl;

(b) acetylmethadol;

(c) allylprodine;

(d) alphacetylmethadol, except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM;

(e) alphameprodine;

(f) alphamethadol;

(g) alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);

(h) alpha-methylthiofentanyl, also known as N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide and;

(i) benzethidine;

(j) betacetylmethadol;

(k) beta-hydroxyfentanyl, also known as N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide;

(l) beta-hydroxy-3-methylfentanyl, also known as N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide;

(m) betameprodine;

(n) betamethadol;

(o) betaprodine;

(p) clonitazene;

(q) dextromoramide;

(r) diampromide;

(s) diethylthiambutene;

(t) difenoxin;

(u) dimenoxadol;

(v) dimepheptanol;

(w) dimethylthiambutene;

(x) dioxaphetyl butyrate;

(y) dipipanone;

(z) ethylmethylthiambutene;

(aa) etonitazene;

(bb) etoxeridine;

(cc) furethidine;

(dd) hydroxypethidine;

(ee) ketobemidone;

(ff) levomoramide;

(gg) levophenacylmorphan;

(hh) 3-methylfentanyl, also known as N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide;

(ii) 3-methylthiofentanyl, also known as N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide;

(jj) morpheridine;

(kk) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

(ll) noracymethadol;

(mm) norlevorphanol;

(nn) normethadone;

(oo) norpipanone;

(pp) para-fluorofentanyl, also known as N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]propanamide;

(qq) PEPAP(1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);

(rr) phenadoxone;

(ss) phenampromide;

(tt) phenomorphan;

(uu) phenoperidine;

(vv) piritramide;

(ww) proheptazine;

(xx) properidine;

(yy) propiram;

(zz) racemoramide;

(aaa) thiofentanyl, also known as N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide;

(bbb) tilidine; and

(ccc) trimeperidine.

(2) For the purposes of subsection (1)(hh), the term "isomer" includes the optical, position, and geometric isomers.

(3) Opium derivatives. Unless specifically excepted or listed in another schedule, any of the following are opium derivatives, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) acetorphine;

(b) acetyldihydrocodeine;

(c) benzylmorphine;

(d) codeine methylbromide;

(e) codeine-n-oxide;

(f) cyprenorphine;

(g) desomorphine;

(h) dihydromorphine;

(i) drotebanol;

(j) etorphine, except hydrochloride salt;

(k) heroin;

(l) hydromorphinol;

(m) methyldesorphine;

(n) methyldihydromorphine;

(o) morphine methylbromide;

(p) morphine methylsulfonate;

(q) morphine-n-oxide;

(r) myrophine;

(s) nicocodeine;

(t) nicomorphine;

(u) normorphine;

(v) pholcodine; and

(w) thebacon.

(4) Hallucinogenic substances. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following is a hallucinogenic substance, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) alpha-ethyltryptamine. Trade or other names include etryptamine, monase, alpha-ethyl-1H-indole-3-ethanamine, 3-(2-aminobutyl) indole, alpha-ET, and AET.

(b) 4-bromo-2,5-dimethoxy-amphetamine. Trade or other names include 4-bromo-2, 5-dimethoxy-alpha-methylphenethylamine and 4-bromo-2,5-DMA.

(c) 4-bromo-2,5-dimethoxyphenethylamine. Trade or other names include 2-(4-bromo-2, 5-dimethoxyphenyl)-1-aminoethane, alpha-desmethylDOB, and 2C-B,Nexus.

(d) 2,5-dimethoxyamphetamine. Trade or other names include 2,5-dimethoxy-alpha-methylphenothylamine and 2,5-DMA.

(e) 3,4-methylenedioxy amphetamine;

(f) 2,5-dimethoxy-4-ethylamphetamine. A trade or other name is DOET.

(g) 4-methoxyamphetamine. A trade or other name is 4-methoxy-alpha-methylphenethylamine.

(h) 5-methoxy-3,4-methylenedioxy amphetamine;

(i) 4-methyl-2,5-dimethoxy-amphetamine. Trade or other names include 4-methyl-2, 5-dimethoxy-alpha-methylphenethylamine, DOM, and STP.

(j) 3,4-methylenedioxy amphetamine;

(k) 3,4-methylenedioxymethamphetamine (MDMA);

(l) 3,4-methylenedioxy-N-ethylamphetamine, also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, and MDEA;

(m) N-hydroxy-3,4-methylenedioxyamphetamine, also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine and N-hydroxy MDA;

(n) 3,4,5-trimethoxy amphetamine;

(o) bufotenine. Trade and other names include 3-(beta-dimethylaminoethyl)-5-hydroxyindole, 3-(2-dimethylaminoethyl)-5-indolol, N,N-dimethylserotonin, 5-hydroxy-N,N-dimethyltryptamine, and mappine.

(p) diethyltryptamine. Trade and other names include N,N-diethyltryptamine and DET.

(q) dimethyltryptamine. A trade or other name is DMT.

(r) ibogaine. Trade or other names include 7-ethyl-6,6beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1', 2':1,2] azepine [5,4-b] indole and tabernanthe iboga.

(s) lysergic acid diethylamide;

(t) marijuana;

(u) mescaline;

(v) parahexyl. Trade or other names include 3-hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,8,9-trimethyl-6H-dibenzo[b,d]pyran and synhexyl.

(w) peyote, meaning all parts of the plant presently classified botanically as lophophora williamsii lemaire, whether growing or not; the seed of the plant; any extract from any part of the plant; and every compound, manufacture, salts, derivatives, mixture, or preparation of the plant, its seed, or extracts;

(x) n-ethyl-3-piperidyl benzilate;

(y) n-methyl-3-piperidyl benzilate;

(z) psilocybin;

(aa) psilocyn;

(bb) tetrahydrocannabinols, including synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis, sp, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity, such as those listed in subsections (4)(bb)(i) through (4)(bb)(iii). Because nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered, are included in the category as follows:

(i) delta 1 (delta 9) cis or trans tetrahydrocannabinol and its optical isomers;

(ii) delta 6 cis or trans tetrahydrocannabinol and its optical isomers; and

(iii) delta 3,4 cis or trans tetrahydrocannabinol and its optical isomers;

(cc) ethylamine analog of phencyclidine. Trade or others names include N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)ethylamine, N-(1-phenylcyclohexyl)ethylamine, cyclohexamine, and PCE.

(dd) pyrrolidine analog of phencyclidine. Trade or other names include 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, and PHP.

(ee) thiophene analog of phencyclidine. Trade or other names include 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine, TPCP, and TCP.

(ff) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine. A trade or other name is TCPy.

(5) For the purposes of subsection (4), the term "isomer" includes the optical, position, and geometric isomers.

(6) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant having a depressant effect on the central nervous system, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) mecloqualone; and

(b) methaqualone.

(7) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) aminorex. Trade or other names include aminoxaphen, 2-amino-5-phenyl-2-oxazoline, and 4,5-dihydro-5-phenyl-2-oxazolamine.

(b) cathinone. Trade or other names include 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone.

(c) fenethylline;

(d) methcathinone. Trade or other names include 2-(methylamino)-propiophenone, alpha-(methylamino)propiophenone, 2-(methylamino)-1-phenylpropan-1-one, alpha-N-methylaminopropiophenone, monomethylpropion, ephedrone, N-methylcathinone, methylcathinone, AL-464, AL-422, AL-463, and UR1432, including its salts, optical isomers, and salts of optical isomers.

(e) (levo-dextro) cis-4-methylaminorex, also known as (levo-dextro) cis-4, 5-dihydro-4-methyl-5-phenyl-2-oxazolamine;

(f) N-ethylamphetamine;

(g) N,N-dimethylamphetamine, also known as N,N-alpha-trimethyl-benzeneethamine and N,N-alpha-trimethylphenethylamine.

(8) Substances subject to emergency scheduling. Any material, compound, mixture, or preparation that contains any quantity of the following substances is included in this category:

(a) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts, and salts of isomers); and

(b) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts, and salts of isomers).

(9) If prescription or administration is authorized by the Federal Food, Drug and Cosmetic Act, then any material, compound, mixture, or preparation containing tetrahydrocannabinols listed in subsection (4) must automatically be rescheduled from Schedule I to Schedule II.

History: En. Sec. 5, Ch. 412, L. 1973; R.C.M. 1947, 54-305; amd. Sec. 1, Ch. 320, L. 1979; amd. Sec. 1, Ch. 141, L. 1983; amd. Sec. 1, Ch. 36, L. 1991; amd. Sec. 2, Ch. 113, L. 1997.

Cross-References

Criminal distribution of dangerous drugs, 45-9-101.

Criminal distribution of imitation dangerous drugs, 45-9-112.

50-32-223. Criteria for placement of drug in Schedule II. The board shall place a drug in Schedule II if it finds that:

(1) the drug has high potential for abuse;

(2) the drug has currently accepted medical use in treatment in the United States or currently accepted medical use with severe restrictions; and

(3) the abuse of the drug may lead to severe psychic or physical dependence.

History: En. Sec. 6, Ch. 412, L. 1973; R.C.M. 1947, 54-306.

50-32-224. Specific dangerous drugs included in Schedule II. Schedule II consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or listed in another schedule, any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, are included in this category:

(a) opium and opiate and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone and their respective salts, but including the following:

(i) raw opium;

(ii) opium extracts;
(iii) opium fluid;
(iv) powdered opium;
(v) granulated opium;
(vi) tincture of opium;
(vii) codeine;
(viii) ethylmorphine;
(ix) etorphine hydrochloride;
(x) hydrocodone;
(xi) hydromorphone;
(xii) metopon;
(xiii) morphine;
(xiv) oxycodone;
(xv) oxymorphone; and
(xvi) thebaine;

(b) any salt, compound, derivative, or preparation of them that is chemically equivalent or identical with any of the substances referred to in subsection (1)(a), except that these substances do not include the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw;

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves, including cocaine and ecgonine and their salts, isomers, derivatives, and salts of isomers, and derivatives, and any salt, compound, derivative, or preparation of them that is chemically equivalent or identical with any of these substances, except that these substances do not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine; and

(e) concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy.

(2) Opiates. Unless specifically excepted or listed in another schedule, any of the following are opiates, including isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

(a) alfentanil;
(b) alphaprodine;
(c) anileridine;
(d) bezitramide;
(e) bulk dextropropoxyphene (nondosage forms);
(f) carfentanil;
(g) dihydrocodeine;
(h) diphenoxylate;
(i) fentanyl;
(j) isomethadone;
(k) levo-alphacetylmethadol. Other names include levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM.
(l) levomethorphan;
(m) levorphanol;
(n) metazocine;
(o) methadone;
(p) methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
(q) moramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
(r) pethidine, also known as meperidine;
(s) pethidine-intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
(t) pethidine-intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
(u) pethidine-intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
(v) phenazocine;
(w) piminodine;
(x) racemethorphan;
(y) racemorphan; and
(z) sufentanil.

(3) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system:

(a) amphetamine, its salts, optical isomers, and salts of its optical isomers;
(b) phenmetrazine and its salts;
(c) methamphetamine, its salts, isomers, and salts of its isomers; and
(d) methylphenidate.

(4) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant having a depressant effect on the central nervous system, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) amobarbital;
(b) glutethimide;
(c) pentobarbital;
(d) phencyclidine; and
(e) secobarbital.

(5) Hallucinogenic substances include the following:

(a) dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a federal food and drug administration-approved drug product. Other names for dronabinol include (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b, d]pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol.

(b) nabilone. Another name for nabilone is (levo-dextro)-trans-3-(1, 1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b, d] pyran-9-one.

(6) Immediate precursors. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is an immediate precursor:

(a) phenylacetone, an immediate precursor to amphetamine and methamphetamine. Trade or other names for phenylacetone include phenyl-2-propanone, P2P, benzyl methyl ketone, and methyl benzyl ketone.

(b) 1-phenylcyclohexylamine and 1-piperidinocyclohexanecarbonitrile (PCC), immediate precursors to phencyclidine (PCP).

History: En. Sec. 7, Ch. 412, L. 1973; R.C.M. 1947, 54-307; amd. Sec. 2, Ch. 141, L. 1983; amd. Sec. 2, Ch. 36, L. 1991; amd. Sec. 3, Ch. 113, L. 1997.

Cross-References

Criminal distribution of dangerous drugs, 45-9-101.
Criminal distribution of imitation dangerous drugs, 45-9-112.

50-32-225. Criteria for placement of drug in Schedule III. The board shall place a drug in Schedule III if it finds that:

(1) the drug has a potential for abuse less than the drugs listed in Schedules I and II;
(2) the drug has currently accepted medical use in treatment in the United States; and
(3) abuse of the drug may lead to moderate or low physical dependence or high psychological dependence.

History: En. Sec. 8, Ch. 412, L. 1973; R.C.M. 1947, 54-308.

50-32-226. Specific dangerous drugs included in Schedule III. Schedule III consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system, including salts, isomers (whether optical, position, or geometric), and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) benzphetamine;
(b) chlorphentermine;
(c) clortermine; and
(d) phendimetrazine.

(2) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant having a depressant effect on the central nervous system:

(a) any compound, mixture, or preparation containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs and one or more other active medicinal ingredients that are not listed in any schedule;

(b) any suppository dosage form containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs approved by the federal food and drug administration for marketing only as a suppository;

(c) any substance that contains any quantity of a derivative of barbituric acid or any salt of barbituric acid;

(d) chlorhexadol;

(e) lysergic acid;

(f) lysergic acid amide;

(g) methyprylon;

(h) sulfondiethylmethane;

(i) sulfonethylmethane;

(j) sulfonmethane; and

(k) tiletamine and zolazepam or any of their salts. A trade or other name for a tiletamine-zolazepam combination product is telazol. A trade or other name for tiletamine is 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. A trade or other name for zolazepam is 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e] [1,4]-diazepin-7(1H)-one, flupyrazapon.

(3) Nalorphine.

(4) Narcotic drugs. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following is a narcotic drug, including its salts calculated as the free anhydrous base or alkaloid in the following limited quantities:

(a) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(b) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(c) not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(d) not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(e) not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(f) not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(g) not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; or

(h) not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Anabolic steroids. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids, that promotes muscle growth. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances is an anabolic steroid, including salts, isomers, and salts of isomers whenever the existence of those salts of isomers is possible within the specific chemical designation:

(a) boldenone;

(b) chlorotestosterone, also known as 4-chlortestosterone;

(c) clostebol;

(d) dihydrochlormethyltestosterone;

(e) dihydrotestosterone, also known as 4-dihydrotestosterone;

(f) drostanolone;

(g) ethylestrenol;

(h) fluoxymesterone;

(i) formebulone, also known as formebolone;

(j) mesterolone;

(k) methandienone;
(l) methandranone;
(m) methandriol;
(n) methandrostenolone;
(o) methenolone;
(p) methyltestosterone;
(q) mibolerone;
(r) nandrolone;
(s) norethandrolone;
(t) oxandrolone;
(u) oxymestrone;
(v) oxymetholone;
(w) stanolone;
(x) stanozolol;
(y) testolactone;
(z) testosterone; or
(aa) trenbolone.

History: En. Sec. 9, Ch. 412, L. 1973; R.C.M. 1947, 54-309(1) thru (4); amd. Sec. 3, Ch. 141, L. 1983; amd. Sec. 3, Ch. 36, L. 1991; amd. Sec. 4, Ch. 42, L. 1991; amd. Sec. 4, Ch. 113, L. 1997.

Cross-References

Criminal distribution of dangerous drugs, 45-9-101.
Criminal distribution of imitation dangerous drugs, 45-9-112.

50-32-227. Board authorized to exempt certain compounds, mixtures, or preparations from Schedule III. The board may except by rule any compound, mixture, or preparation containing any stimulant or depressant drug listed in 50-32-226(1) and (2) from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the drugs which have a stimulant or depressant effect on the central nervous system.

History: En. Sec. 9, Ch. 412, L. 1973; R.C.M. 1947, 54-309(5).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-32-228. Criteria for placement of drug in Schedule IV. The board shall place a drug in Schedule IV if it finds that:

(1) the drug has a low potential for abuse relative to drugs in Schedule III;

(2) the drug has currently accepted medical use in treatment in the United States; and

(3) abuse of the drug may lead to limited physical dependence or psychological dependence relative to the drugs in Schedule III.

History: En. Sec. 10, Ch. 412, L. 1973; R.C.M. 1947, 54-310.

50-32-229. Specific dangerous drugs included in Schedule IV. Schedule IV consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Narcotic drugs. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic is a drug, including its salts calculated as the free anhydrous base or alkaloid in the following limited quantities:

(a) not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit; and

(b) dextropropoxyphene (alpha-($Y1-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

(2) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) alprazolam;

(b) barbital;
(c) bromazepam;
(d) camazepam;
(e) chloral betaine;
(f) chloral hydrate;
(g) chlordiazepoxide;
(h) clobazam;
(i) clonazepam;
(j) clorazepate;
(k) clotiazepam;
(l) cloxazolam;
(m) delorazepam;
(n) diazepam;
(o) estazolam;
(p) ethchlorvynol;
(q) ethinamate;
(r) ethyl loflazepate;
(s) fludiazepam;
(t) flunitrazepam;
(u) flurazepam;
(v) halazepam;
(w) haloxazolam;
(x) ketazolam;
(y) loprazolam;
(z) lorazepam;
(aa) lormetazepam;
(bb) mebutamate;
(cc) medazepam;
(dd) meprobamate;
(ee) methohexital;
(ff) methylphenobarbital, also known as mephobarbital;
(gg) midazolam;
(hh) nimetazepam;
(ii) nitrazepam;
(jj) nordiazepam;
(kk) oxazepam;
(ll) oxazolam;
(mm) paraldehyde;
(nn) petrichloral;
(oo) phenobarbital;
(pp) pinazepam;
(qq) prazepam;
(rr) quazepam;
(ss) temazepam;
(tt) tetrazepam;
(uu) triazolam; and
(vv) zolpidem.

(3) Fenfluramine. Any material, compound, mixture, or preparation that contains any quantity of fenfluramine, including its salts, isomers (whether optical, position, or geometric), and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible.

(4) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) cathine;
(b) diethylpropion;
(c) fencamfamin;
(d) fenproporex;
(e) mazindol;
(f) mefenorex;

(g) pemoline, including organometallic complexes and chelates thereof;
(h) phentermine;
(i) pipradrol; and
(j) SPA ((-)-1-dimethylamino-1,2-diphenylethane).
(5) Ephedrine.
(a) Except as provided in subsection (5)(b), any material, compound, mixture, or preparation that contains any quantity of ephedrine having a stimulant effect on the central nervous system, including its salts, enantiomers (optical isomers), and salts of enantiomers (optical isomers) when ephedrine is the only active medicinal ingredient or is used in combination with therapeutically insignificant quantities of another active medicinal ingredient.
(b) Ephedrine does not include materials, compounds, mixtures, or preparations labeled in compliance with the Dietary Supplement Health and Education Act of 1994, 21 U.S.C. 321, et seq., that contain only natural ephedra alkaloids or extracts of natural ephedra alkaloids.
(c) Ephedrine may be immediately accessible for use by a licensed physician in a patient care area if it is under the physician's direct supervision.
(6) Other substances. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of pentazocine, including its salts.
History: En. Sec. 11, Ch. 412, L. 1973; R.C.M. 1947, 54-311(1), (2); amd. Sec. 14, Ch. 37, L. 1979; amd. Sec. 4, Ch. 141, L. 1983; amd. Sec. 4, Ch. 36, L. 1991; amd. Sec. 1, Ch. 103, L. 1997; amd. Sec. 5, Ch. 113, L. 1997; amd. Sec. 1, Ch. 253, L. 1999.

Cross-References
Criminal distribution of dangerous drugs, 45-9-101.
Criminal distribution of imitation dangerous drugs, 45-9-112.

50-32-230. Board authorized to exempt certain compounds, mixtures, or preparations from Schedule IV. The board may except by rule any compound, mixture, or preparation containing any depressant drug listed in 50-32-229 from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the drugs which have a depressant effect on the central nervous system.
History: En. Sec. 11, Ch. 412, L. 1973; R.C.M. 1947, 54-311(3).

Cross-References
Adoption and publication of rules, Title 2, ch. 4, part 3.

50-32-231. Criteria for placement of drug in Schedule V. The board shall place a drug in Schedule V if it finds that:
(1) the drug has low potential for abuse relative to the controlled drugs listed in Schedule IV;
(2) the drug has currently accepted medical use in treatment in the United States; and
(3) the drug has limited physical dependence or psychological dependence liability relative to the dangerous drugs listed in Schedule IV.
History: En. Sec. 12, Ch. 412, L. 1973; R.C.M. 1947, 54-312.

50-32-232. Specific dangerous drugs included in Schedule V. Schedule V consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.
(1) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing buprenorphine and its salts is included in this category.
(2) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following is a narcotic drug, including its salts, calculated as the free anhydrous base or alkaloid in limited quantities as set forth in subsections (2)(a) through (2)(f), which include one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:
(a) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;
(b) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;
(c) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(d) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(e) not more than 100 milligrams of opium per 100 milliliters or per 100 grams; and

(f) not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(3) Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of pyrovalerone is a stimulant having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers.

History: En. Sec. 13, Ch. 412, L. 1973; R.C.M. 1947, 54-313; amd. Sec. 15, Ch. 37, L. 1979; amd. Sec. 5, Ch. 141, L. 1983; amd. Sec. 5, Ch. 36, L. 1991; amd. Sec. 6, Ch. 113, L. 1997.

Cross-References

Criminal distribution of dangerous drugs, 45-9-101.

Criminal distribution of imitation dangerous drugs, 45-9-112.

50-32-233. Exempt anabolic steroid products. The following anabolic steroid-containing compounds, mixtures, or preparations are exempt from this chapter:

(1) androgyn L.A.;
(2) andro-estro 90-4;
(3) depandrogyn;
(4) DEPO-T.E.;
(5) deptestrogen;
(6) duomone;
(7) duratestrin;
(8) duo-span II;
(9) estratest;
(10) estratest HS;
(11) pan estra test;
(12) premarin with methyltestosterone;
(13) synovex H pellets in process;
(14) synovex H pellets in process granulation;
(15) test-estro cypionates;
(16) testagen;
(17) testosterone cyp 50 estradiol cyp 2;
(18) testosterone, cypionate-estradiol, cypionate injection;
(19) testosterone, enanthate-estradiol, valerate injection; and
(20) tilapia sex reversal feed (investigational).

History: En. Sec. 7, Ch. 113, L. 1997.

Part 3
Annual Registration

50-32-301. Annual registration required for manufacturer, distributor, or dispenser. (1) Every person who manufactures, distributes, or dispenses any dangerous drug within this state must obtain annually a registration issued by the department in accordance with board rules.

(2) Persons registered by the board under this chapter to manufacture, distribute, dispense, or conduct research with dangerous drugs may possess, manufacture, distribute, dispense, or conduct research with those drugs to the extent authorized by their registration and in conformity with the other provisions of this chapter.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(1), (2); amd. Sec. 15, Ch. 379, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-32-302. Exceptions to registration requirement. The following persons need not register and may lawfully possess dangerous drugs under this chapter:

(1) an agent or employee of any registered manufacturer, distributor, or dispenser of any dangerous drug if he is acting in the usual course of his business or employment;

(2) a common or contract carrier or warehouseman or an employee thereof, whose possession of any dangerous drug is in the usual course of business or employment;

(3) an ultimate user or a person in possession of any dangerous drug pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V drug;

(4) officers and employees of the state or a political subdivision of the state, while acting in the course of their official duties.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(3).

50-32-303. Waiver of registration requirement for practitioners licensed by federal government. The board shall waive the requirement for registration of practitioners, other than pharmacies, who are registered or licensed by the federal government to dispense dangerous drugs.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(4).

50-32-304. Waiver of registration requirement when in public interest. The board may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(5).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-32-305. Separate registration required. A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses dangerous drugs.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(6).

50-32-306. Criteria for registration of manufacturers and distributors. (1) The board shall register an applicant to manufacture or distribute dangerous drugs included in 50-32-222, 50-32-224, 50-32-226, 50-32-229, and 50-32-232 unless it determines that the issuance of that registration would be inconsistent with the public interest.

(2) In determining the public interest, the board shall consider the following factors:

(a) maintenance of effective controls against diversion of dangerous drugs into other than legitimate medical, scientific, or industrial channels;

(b) compliance with applicable state and local law;

(c) any convictions of the applicant under any federal and state laws relating to any dangerous drug;

(d) past experience in the manufacture or distribution of dangerous drugs and the existence in the applicant's establishment of effective controls against diversion;

(e) furnishing by the applicant of false or fraudulent material in any application filed under this chapter;

(f) suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense dangerous drugs as authorized by federal law; and

(g) any other factors relevant to and consistent with the public health and safety.

(3) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this chapter.

History: En. Sec. 17, Ch. 412, L. 1973; amd. Sec. 7, Ch. 350, L. 1974; R.C.M. 1947, 54-317(1), (4).

50-32-307. Manufacture and distribution limited by registration. Registration under 50-32-306 does not entitle a registrant to manufacture and distribute dangerous drugs in Schedule I or II other than those specified in the registration.

History: En. Sec. 17, Ch. 412, L. 1973; amd. Sec. 7, Ch. 350, L. 1974; R.C.M. 1947, 54-317(2).

50-32-308. Criteria for registration of practitioners. (1) Practitioners shall be registered to dispense any dangerous drugs or to conduct research with dangerous drugs in Schedules II through V if they are authorized to dispense or conduct research under the laws of this state. The board need not require separate registration for practitioners engaging in research with nonnarcotic

dangerous drugs in Schedules II through V where the registrant is already registered under this chapter in another capacity.

(2) Practitioners registered under federal law to conduct research with Schedule I drugs may conduct research with Schedule I drugs within this state upon furnishing the board evidence of that federal registration.

History: En. Sec. 17, Ch. 412, L. 1973; amd. Sec. 7, Ch. 350, L. 1974; R.C.M. 1947, 54-317(3).

50-32-309. Registrants to maintain records and inventories. Persons registered to manufacture, distribute, or dispense dangerous drugs under this chapter shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of federal law and with any additional rules the board issues.

History: En. Sec. 20, Ch. 412, L. 1973; R.C.M. 1947, 54-320.

Cross-References

Prescription requirements, 50-32-208.

50-32-310. Inspections authorized. The board may have the establishment of a registrant or applicant for registration inspected.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(7).

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-32-311. Revocation or suspension of registration. (1) A registration under 50-32-301 to manufacture, distribute, or dispense a dangerous drug may be suspended or revoked by the board upon a finding that the registrant has:

(a) furnished false or fraudulent material information in any application filed under this chapter;

(b) been convicted of a felony under any state or federal law relating to any dangerous drug or controlled substance; or

(c) had his federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances.

(2) The board may limit revocation or suspension of a registration to the particular dangerous drug with respect to which grounds for revocation or suspension exist.

(3) If the board suspends or revokes a registration, all dangerous drugs owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of drugs under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable drugs and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all dangerous drugs may be forfeited to the state.

(4) The board shall promptly cause the bureau to be notified of all orders suspending or revoking registration and all forfeitures of dangerous drugs.

History: En. Sec. 18, Ch. 412, L. 1973; amd. Sec. 8, Ch. 350, L. 1974; R.C.M. 1947, 54-318.

50-32-312. Procedure for denial, suspension, revocation of, or refusal to renew registration. (1) Before denying, suspending, or revoking a registration or refusing a renewal of registration, the board shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall require the applicant or registrant to appear before the board at a time and place not less than 30 days after the date of service of the order, but in the case of a denial of renewal of registration, the show cause order shall be served not later than 30 days before the expiration of the registration. These proceedings shall be conducted without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration do not abate the existing registration, which remains in effect pending the outcome of the administrative hearing.

(2) The board may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under 50-32-311 or whenever renewal of registration is refused if it finds that there is an imminent danger to the public health or safety which warrants such action. The

suspension continues in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction.

History: En. Sec. 19, Ch. 412, L. 1973; amd. Sec. 9, Ch. 350, L. 1974; amd. Sec. 7, Ch. 187, L. 1977; R.C.M. 1947, 54-319.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

Judicial review, Title 2, ch. 4, part 7.

50-32-313. Practitioner's failure to register a misdemeanor. Practitioners who fail or refuse to register as required by this chapter shall be guilty of a misdemeanor and upon conviction therefor may be fined not to exceed $1,000, imprisoned in the county jail not to exceed 1 year, or both.

History: En. Sec. 29, Ch. 412, L. 1973; R.C.M. 1947, 54-327.

50-32-314. Board to adopt rules for registration of ambulatory surgical facilities. (1) The board shall, by October 1, 1999, adopt rules to provide for the registration of ambulatory surgical facilities pursuant to this part. The rules must categorize ambulatory surgical facilities as a "distributor" pursuant to 50-32-101(12) or other category of registrant as determined by the board.

(2) If the board determines that ambulatory surgical facilities require the services of a pharmacist in order to be registered, the board shall allow those facilities to use the services of a consulting pharmacist to satisfy the obligation imposed by the board.

(3) This section does not affect any existing requirement that persons providing dangerous drugs to an ambulatory surgical facility or persons administering dangerous drugs within or as the result of procedures performed at an ambulatory surgical facility be registered pursuant to this part.

History: En. Sec. 1, Ch. 273, L. 1999.

Part 4
Transfer of Precursors to Controlled Substances

50-32-401. Report required for precursor to controlled substance. (1) A manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any of the following substances to a person in this state must submit a report to the department of justice detailing all such transactions:

(a) phenyl-2-propanone;

(b) methylamine;

(c) d-lysergic acid;

(d) ergotamine tartrate;

(e) diethyl malonate;

(f) malonic acid;

(g) ethyl malonate;

(h) barbituric acid; and

(i) piperidine.

(2) The department of justice may adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act that add or delete substances to the list of regulated substances detailed in subsection (1), if the substance is a precursor to a dangerous drug as defined in 50-32-101.

(3) This section does not apply to any of the following:

(a) a pharmacist or other authorized person who sells or furnishes the substance upon the prescription of a physician, dentist, podiatrist, or veterinarian;

(b) a physician, dentist, podiatrist, or veterinarian who administers or furnishes the substance to his patients;

(c) a manufacturer or wholesaler licensed by the board of pharmacy who sells, transfers, or otherwise furnishes the substance to a licensed pharmacist, physician, dentist, podiatrist, or veterinarian;

(d) transfers of the substances listed in subsection (1) within any college or university to an employee or student of the college or university for the purpose of teaching or research authorized by the college or university.

History: En. Sec. 1, Ch. 227, L. 1979; amd. Sec. 1, Ch. 247, L. 1983.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

50-32-402. Reports required -- exceptions. (1) Except as provided in subsection (2), a manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance regulated pursuant to 50-32-401 to a person in this state must, within 72 hours, submit a report of the transaction to the department of justice.

(2) The department may authorize the submission of the reports on a monthly basis for repeated, regular transactions between the furnisher and the recipient involving the same substance, if the department determines:

(a) a pattern of regular supply of the substance exists as between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes the substance and the recipient of the substance; and

(b) the recipient has established a record of use of the substance for lawful purposes.

History: En. Sec. 2, Ch. 227, L. 1979.

Cross-References

Department of Justice, Title 2, ch. 15, part 20.

50-32-403. Common reporting form. (1) The department of justice must provide a common reporting form for the report required under 50-32-401.

(2) The form must contain the following information:

(a) name of the substance;

(b) quantity of the substance sold, transferred, or furnished;

(c) the date the substance was sold, transferred, or furnished;

(d) the name and address of the person buying or receiving the substance; and

(e) the name and address of the manufacturer, wholesaler, or retailer.

History: En. Sec. 3, Ch. 227, L. 1979.

Cross-References

Department of Justice, Title 2, ch. 15, part 20.

50-32-404. Loss, theft, or other discrepancy to be reported. (1) The theft or loss of a substance regulated in accordance with 50-32-401 must be reported to the department of justice within 3 days after the theft or loss is discovered.

(2) Any difference between the quantity received of any substance regulated as provided in 50-32-401 and the quantity shipped must be reported to the department of justice within 3 days of the discovery of the discrepancy.

(3) A report made pursuant to this section shall also include the name of the common carrier or person who transported the substance and the date of shipment.

History: En. Sec. 4, Ch. 227, L. 1979.

Cross-References

Department of Justice, Title 2, ch. 15, part 20.

50-32-405. Violation -- penalties. (1) A person commits the offense of failure to report distribution of a precursor to a controlled substance if the person purposely or knowingly fails to report the sale, transfer, or other furnishing of a substance regulated by 50-32-401.

(2) A person convicted of failing to report the distribution of a precursor to a controlled substance shall be fined not more than $10,000 or be imprisoned in the state prison for not more than 10 years, or both.

History: En. Sec. 5, Ch. 227, L. 1979; amd. Sec. 20, Ch. 432, L. 1999.

CHAPTER 41
LAETRILE

Part 1 -- General Provisions

50-41-101. Laetrile defined.

50-41-102. Laetrile authorized.

50-41-103. Hospital may not interfere.

50-41-104. Health care facility liability.
50-41-105. Physician not subject to disciplinary action.
50-41-106. Laetrile not endorsed -- permitted as a dietary supplement.
50-41-107. Laetrile optional.

Part 1
General Provisions

50-41-101. Laetrile defined. As used in this chapter, "laetrile", also known as B-17, means a cyanogenetic glycoside, which is processed from the seeds of certain fruits, including apricots, peaches, and plums.

History: En. Sec. 1, Ch. 454, L. 1979.

50-41-102. Laetrile authorized. The manufacture, sale, possession, and distribution of laetrile is lawful within this state.

History: En. Sec. 2, Ch. 454, L. 1979.

50-41-103. Hospital may not interfere. A hospital or health care facility may not interfere with the physician-patient relationship by restricting or forbidding the use of laetrile when prescribed or administered by a physician and requested by a patient.

History: En. Sec. 3, Ch. 454, L. 1979.

Cross-References

Health care facility and hospital defined, 50-5-101.

50-41-104. Health care facility liability. No hospital, health care facility, or employee thereof shall be held liable for the administration of laetrile to any person at the direction of a licensed physician.

History: En. Sec. 4, Ch. 454, L. 1979.

Cross-References

Liability, Title 27, ch. 1, part 7.

50-41-105. Physician not subject to disciplinary action. A physician may not be subjected to disciplinary action by the board of medical examiners for prescribing or administering laetrile to a patient under his care as an adjunct to recognized, customary, or accepted modes of therapy in the treatment of any malignancy, disease, illness, or physical condition.

History: En. Sec. 5, Ch. 454, L. 1979.

Cross-References

Board of Medical Examiners, Title 37, ch. 3, part 2.

50-41-106. Laetrile not endorsed -- permitted as a dietary supplement. This chapter:

(1) is not an endorsement of laetrile for the treatment of any malignancy, disease, illness, or physical condition;

(2) does not prevent a physician from prescribing laetrile as a dietary supplement to a patient not suffering from any known malignancy, disease, illness, or physical condition.

History: En. Sec. 6, Ch. 454, L. 1979.

50-41-107. Laetrile optional. This chapter does not require:

(1) a physician, pharmacist, pharmacy, manufacturer, or distributor to manufacture, sell, or distribute laetrile;

(2) a physician to prescribe laetrile for any patient.

History: En. Sec. 7, Ch. 454, L. 1979.

Cross-References

Regulation of practice of medicine, Title 37, ch. 3.

Regulation of practice of pharmacy, Title 37, ch. 7.

CHAPTER 42
DIMETHYL SULFOXIDE (DMSO)

Part 1 -- General Provisions

50-42-101. DMSO defined.
50-42-102. DMSO authorized.
50-42-103. Hospital not to interfere.
50-42-104. Health care facility nonliability.
50-42-105. Physician not subject to disciplinary action.
50-42-106. DMSO not endorsed.
50-42-107. DMSO optional.

Part 1
General Provisions

Part Cross-References

Drugs and devices, Title 50, ch. 31, part 3.

50-42-101. DMSO defined. As used in this part, "DMSO" means dimethyl sulfoxide.

History: En. Sec. 2, Ch. 333, L. 1981.

50-42-102. DMSO authorized. The manufacture, sale, possession, and distribution of DMSO are lawful within this state. However, distribution or sale of DMSO for human use must be by prescription in accordance with 50-31-307. A person who violates this section is subject to the penalties provided for in 50-31-506.

History: En. Sec. 3, Ch. 333, L. 1981.

50-42-103. Hospital not to interfere. A hospital or health care facility may not interfere with the physician-patient relationship by restricting or forbidding the use of DMSO when requested by a patient and prescribed or administered by a physician.

History: En. Sec. 4, Ch. 333, L. 1981.

Cross-References

Health care facility and hospital defined, 50-5-101.

50-42-104. Health care facility nonliability. No hospital, health care facility, pharmacy, or employee thereof shall be held liable for the administration of DMSO to any person at the direction of a physician licensed in Montana.

History: En. Sec. 5, Ch. 333, L. 1981.

Cross-References

Liability, Title 27, ch. 1, part 7.

50-42-105. Physician not subject to disciplinary action. A physician may not be subjected to disciplinary action by the board of medical examiners for prescribing or administering DMSO to a patient under his care as an adjunct to recognized, customary, or accepted modes of therapy in the treatment of any malignancy, disease, illness, or physical condition.

History: En. Sec. 6, Ch. 333, L. 1981.

Cross-References

Board of Medical Examiners, Title 37, ch. 3, part 2.

50-42-106. DMSO not endorsed. This part is not an endorsement of DMSO for the treatment of any malignancy, disease, illness, or physical condition.

History: En. Sec. 7, Ch. 333, L. 1981.

50-42-107. DMSO optional. This part does not require:

(1) a physician, pharmacist, pharmacy, manufacturer, or distributor to manufacture, sell, or distribute DMSO; or

(2) a physician to prescribe DMSO for any patient.

History: En. Sec. 8, Ch. 333, L. 1981.

Cross-References

Regulation of practice of medicine, Title 37, ch. 3.

Regulation of practice of pharmacy, Title 37, ch. 7.

CHAPTER 43
CALCIUM-EAP, HARNOSAL, AND PHOSETAMIN

Part 1 -- General Provisions

50-43-101. Purpose.
50-43-102. Definitions.
50-43-103. Authorization of medication.
50-43-104. Health care facility may not interfere.
50-43-105. Health care facility immunity.
50-43-106. Physician not subject to disciplinary action.
50-43-107. Medication not endorsed -- permitted as dietary supplement.
50-43-108. Medication not required.

Part 1
General Provisions

Part Cross-References

Regulation of practice of medicine, Title 37, ch. 3.

Regulation of practice of pharmacy, Title 37, ch. 7.

50-43-101. Purpose. The purpose of this part is to provide for the continuation of medication initiated by a physician for multiple sclerosis. This medication includes the substances described in this part and has been found to be effective in alleviating the symptoms of multiple sclerosis.

History: En. Sec. 1, Ch. 430, L. 1987.

50-43-102. Definitions. In this part, the following definitions apply:

(1) "Calcium-EAP" means a calcium salt of the monoester (2-ethylamine) of phosphoric acid.

(2) "Harnosal" means a compound of sulfamethizole and sulfaethidole. A 500-milligram tablet contains 350 milligrams of sulfamethizole and 150 milligrams of sulfaethidole.

(3) "Phosetamin" means a compound of potassium salt of the monoester (2-ethylamine) of phosphoric acid, magnesium salt of the monoester (2-ethylamine) of phosphoric acid, and calcium salt of the monoester (2-ethylamine) of phosphoric acid. A 350-milligram tablet contains 145.8 milligrams of the potassium salt, 145.8 milligrams of the magnesium salt, and 58.4 milligrams of the calcium salt.

History: En. Sec. 2, Ch. 430, L. 1987.

50-43-103. Authorization of medication. The manufacture, sale, possession, and distribution of calcium-EAP, harnosal, and phosetamin to provide for the continuation of medication initiated by a physician for multiple sclerosis are lawful within this state.

History: En. Sec. 3, Ch. 430, L. 1987.

50-43-104. Health care facility may not interfere. A health care facility may not interfere with the physician-patient relationship by restricting or forbidding the use of calcium-EAP, harnosal, or phosetamin when prescribed or administered by a physician.

History: En. Sec. 4, Ch. 430, L. 1987.

50-43-105. Health care facility immunity. No health care facility or employee thereof may be held liable for the administration of calcium-EAP, harnosal, or phosetamin to any person.

History: En. Sec. 5, Ch. 430, L. 1987.

50-43-106. Physician not subject to disciplinary action. A physician may not be disciplined by the board of medical examiners for prescribing or administering calcium-EAP, harnosal, or phosetamin to a patient under his care in the treatment of any malignancy, disease, illness, or physical condition.

History: En. Sec. 6, Ch. 430, L. 1987.

50-43-107. Medication not endorsed -- permitted as dietary supplement. This part:

(1) is not an endorsement of calcium-EAP, harnosal, or phosetamin for the treatment of any malignancy, disease, illness, or physical condition; and

(2) does not prohibit use of calcium-EAP, harnosal, or phosetamin as a dietary supplement.

History: En. Sec. 7, Ch. 430, L. 1987.

50-43-108. Medication not required. This part does not require:

(1) a physician to prescribe calcium-EAP, harnosal, or phosetamin for any patient; or

(2) a physician, pharmacist, pharmacy, manufacturer, or distributor to manufacture, sell, or distribute calcium-EAP, harnosal, or phosetamin.

History: En. Sec. 8, Ch. 430, L. 1987.